



Agenda

Planning and Strategy Committee

Notice is hereby given that a Planning and Strategy Committee of Council will be held at Council Chambers, 1 Belgrave Street, Manly, on:

Monday 8 August 2005

Commencing at 7:30 pm for the purpose of considering items included on the Agenda.

Persons in the gallery are advised that the proceedings of the meeting are being taped for the purpose of ensuring the accuracy of the Minutes. However, under the Local Government Act 1993, no other tape recording is permitted without the authority of the Council or Committee. Tape recording includes a video camera and any electronic device capable of recording speech.

*Copies of business papers are available at the Customer Services Counter at Manly Council, Manly Library and Seaforth Library and are available on Council's website:
www.manly.nsw.gov.au*

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******* END OF AGENDA *******

TO: Planning and Strategy Committee - 8 August 2005
REPORT: Notice of Rescission No. 6
SUBJECT: 38A Rignold Street, Seaforth (DA529/04)
FILE NO:

Councillor Morrison, Councillor Hay, and Councillor Murphy will move:

“That the Council’s decision of 1st August, 2005 being Item ES No. 35 in respect of 38A Rignold Street, Seaforth be and is hereby rescinded.”

The resolution passed on 1st August, 2005 was in the terms of:

“That Development Application No.529/04 for erection of a new dwelling and detached double garage at No.38A Rignold Street Seaforth be **refused** for the following reasons;

1. The proposal fails to comply with Council’s Development Control Plan for the Residential Zone in respect of wall height and setbacks, having regard to Section 79C(1) (a) (iii), (b), (c), (d) and (e) of the Environmental Planning & Assessment Act 1979.
2. The proposal by virtue of it’s height, bulk and scale will have an adverse impact on the amenity of adjoining properties and the immediate area, having regard to Section 79C(1) (a) (iii), (b), (c), (d) and (e) of the Environmental Planning & Assessment Act 1979.
3. The extent of excavation is not effectively controlled and will result in adverse impacts on the amenity of adjoining the adjoining property to the south through limitations on the use of land between the proposed dwelling and the boundary, having regard to Section 79C(1) (a) (iii), (b) and (d) of the Environmental Planning & Assessment Act 1979.
4. The proposal will result in the removal of several significant trees on the site with resultant adverse effects of the amenity and character of the area, having regard to Section 79C(1) (a) (iii), (b), (c), (d) and (e) of the Environmental Planning & Assessment Act 1979.
5. The proposal will result in an adverse impact on views from nearby properties to the east.”

If the above Notice of Rescission is adopted, the following Alternate Motion submitted by Councillor Morrison will be considered:-

“That DA529/04 be deferred for the applicant to meet with senior staff to achieve total compliance with the DCP. The application is to be brought back to the earliest available Council meeting.”

ATTACHMENTS

There are no attachments for this report.

PS080805NR_2.DOC

***** End of Notice of Rescission No. 6 *****

TO: Planning and Strategy Committee - 8 August 2005
REPORT: General Manager's Office Report No. 17
SUBJECT: Development Applications - Publishing of Objection Letters
FILE NO:

SUMMARY

Council at its meeting of 20 June 2005 adopted a Notice of Motion from Councillor Heasman for a report on the implications, if any, of web-publishing submissions on development application received by Council.

REPORT

As a matter of policy, and a requirement of the *Local Government Act*, the public are entitled to access files and documents held by the organisation. Such access is, however, subject to statutory requirements particularly privacy protection provisions. Restrictions on access may also apply for reasons of legal privilege or commercial in confidence where applicable.

On the question of providing web access to public submission made to Council on DAs, while that is technically feasible, associated legal risks places significant constraints on such an undertaking. In this regard, Council's General Legal Counsel's advice is that:-

"....UNDER NO CIRCUMSTANCES should the type of documentation in question (ie objectors' letters and submissions) be placed on the website or otherwise made publicly available without a formal application being made in advance to Council pursuant to either the FOI Act or s 12(6) of the LG Act and with a reasoned decision on that application being made thereafter considering all relevantly applicable matters under the relevant Act."

Counsel's advice in confidence is **attached**.

RECOMMENDATION

That the report be received and noted.

ATTACHMENTS

AT-1 Confidential Legal Advice - *CONFIDENTIAL ATTACHMENT - for the information of Councillors, Legal Advice* 3 page(s)

PS080805GMO_2.DOC

***** End of General Manager's Office Report No. 17 *****

TO: Planning and Strategy Committee - 8 August 2005
REPORT: Corporate Planning and Strategy Division Report No. 41
SUBJECT: North Head Sewage Treatment Plant Process and Reliability Report - Presentation to Council
FILE NO:

SUMMARY

In March 2005 Sydney Water prepared a Review of Environmental Factors (REF) in relation to proposed "Process and Reliability / Renewals" for North Head Sewage Treatment Plant. The proposed works would entrench North Head STP for the next 25 years and beyond which is in direct conflict with Council's position of decommissioning North Head STP and the decentralisation of sewage management.

Public exhibition of the REF closed 11th April and Sydney Water received 10 submissions. Issues raised in each submission have been detailed by Sydney Water in their "Decisions Report" (July, 2005) (as reported to Council 18 July 2005). The decisions report fell short of addressing Council's concerns and Council resolved to request a presentation and question time from Sydney Water. Sydney Water subsequently accepted Council's invitation to present at the P&S Committee held Monday, 8th August.

Council has written to the Premier and Minister Sartor (twice) advising of Council's strong concerns regarding the proposed upgrade of the North Head Sewage Treatment Plant (NHSTP). No correspondence had yet been received and a representative from Ministers Sartor's Office indicated a response had been signed off and was expected to be with Council by Friday 5th August.

REPORT

Background

In March 2005 Sydney Water prepared a Review of Environmental Factors (REF) in relations to proposed "Process and Reliability / Renewals" for North Head Sewage Treatment Plant. 10 submissions were received by Sydney Water including Manly Council. Council's issues associated with the works included:

- *Environmental Protection Licensing*
- *Threatened species – Eastern Banksia Scrub*
- *Threatened species – Long Nosed Bandicoot*
- *Lack of consultation*
- *Biogas storage and cogeneration facility*
- *Air quality*
- *Decommissioning North Head STP, decentralisation of water cycle management and Service Sydney Proposal*
- *Population Predictions and Sydney Metro Strategy*

Sydney Water considered all submissions and prepared a decisions report in an attempt to address these issues. The decisions report fell short of resolving Council's issues and Council resolved at the 18th July 2005 meeting:

1. That Council again records its concern and displeasure that the State Government appears incapable of addressing the issue of planning for the water and sewerage infrastructure needs of Sydney in a sustainable way.

Corporate Planning and Strategy Division Report No. 41 (Cont'd)

2. That Council remains opposed to the further entrenchment and reliance on the North Head site for end of pipe sewerage treatment for northern Sydney and is similarly concerned at the lack of risk assessment and view impact assessment and impact of endangered ecological community of the proposed biogas and co-generation facility.
3. That Council request a presentation from Sydney Water Senior Management on the plans for North Head, particularly on the issues of sludge treatment and co-generation and other issues that represent significant change to the existing infrastructure and/or operations.
4. That Council request an urgent response to correspondence to Hon Minister FE Sartor dated 29th March 2005 and July, 2005.
5. That Council seek from the Hon Minister FE Sartor and Sydney Water, clarification of how the proposed upgrade and expansion of facilities can occur consistent with Sydney Water's in principle support for the proposed North Head Sanctuary.
6. That Council restates its policy of long-term decommissioning of the North Head facility.

Sydney Water have accepted Council's request to present with Steve Baxter and Chris Denton attending this agenda's Planning and Strategy Committee meeting. A presentation will be given and there will be time for questions.

Sustainable Future

The issues and position presented above are not isolated to Manly Council. Decentralised water and wastewater management represent good value to the broader community within the catchment of the North Head STP.

WSROC Councils (particularly Baulkam Hills, Hawkesbury and Blacktown City Council's) have expressed deep concern that sewage generated out west of Sydney is not being utilised wisely for the benefit of Western Sydney i.e. Services Sydney scenario. There exists considerable support from WSROC for Manly Council's objectives in relation to decommissioning North Head. As such Council are in a position to facilitate a greater voice if partnerships are established with the WSROC organisation.

Conclusion

Council, in the past, have asserted the view that decentralised approaches to water and wastewater management represents good value to the community and environment of Manly and brings to light opportunities for eliminating the STP from North Head. This has many positive knock-on effects such as reduced effluent discharging of North Head, reduced traffic through residential areas, reduced footprint and impact on ecological endangered communities (flora and fauna) to name a few.

It is understood that works must proceed so to meet DEC licensing requirements and accommodate expansion in growth, however, Manly Council, in addition to numerous other Council's within the North Head STP catchment, feels there exists feasible opportunities to reduce the reliance on North Head STP through more sustainable techniques including sewage re-use and stormwater harvesting. This is not addressed in the report and Sydney Water is sending high level representatives to present and answer questions at this P&S Committee.

Corporate Planning and Strategy Division Report No. 41 (Cont'd)

RECOMMENDATION

1. That Council receives the presentation from Sydney Water and records its concerns regarding the State Government's inability to manage Sydney's water and wastewater.
2. That Council seek to establish a partnership with WSROC to facilitate a greater voice on decentralisation and effluent interception and provide support and advice for one another.

ATTACHMENTS

There are no attachments for this report.

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***** End of Corporate Planning and Strategy Division Report No. 41 *****

TO: Planning and Strategy Committee - 8 August 2005
REPORT: Corporate Planning and Strategy Division Report No. 42
SUBJECT: Boyle Street, Balgowlah - Findings of Community Consultation with Residents
FILE NO:

SUMMARY

This report is the results of a survey of the residents of Boyle Street between Sydney Road and Griffiths Street. Draft streetscape provisions were presented to Council at the LUM Meeting of 14 June and led to the following resolution by Council:

“That this item be deferred until all households in Boyle Street be surveyed to gauge community views on the proposed Residential DCP.”

The body of this report will address the results of consultation with the residents of Boyle Street and make recommendations based upon these results.

REPORT

Survey Process:

- Of the 28 inhabited households on Boyle Street, 18 responded to the survey, one declined and the rest were not available on the evenings the survey took place and did not reply to follow-up letters.
- The survey comprised background questions followed by 11 questions on which respondents could rate their position on a scale from 1 (Strongly Agree) to 5 (Strongly Disagree).
- Feedback on the survey process was very positive and the survey itself provided valuable insight in to the perceptions and values of residents, albeit from a small and specific selection of people. The majority of residents expressed appreciation for the opportunity to voice their opinions confidentially and personally. Given the opinions raised by residents (both in favour and opposed) regarding 30 Boyle Street and the proximity of the street to the proposed Totem development, residents tended to have informed and specific knowledge of development issues.

General Findings of Survey:

- Street profile: Primarily long-term owner-occupiers, a large number of whom are families with children. This stability is valued highly by residents and in order to retain this character, it was acknowledged that additions to existing properties is inevitable.
- Street character: The character of the street is highly valued by the majority of residents. 72% indicated that they thought the character should be protected although 39% agreed or strongly agreed that guidelines could have a negative impact on property value. 78% indicated they had specific streetscape concerns while only 6% had no concerns whatsoever.
- Character elements valued by respondents included: single-storey bungalow-style houses, mature plantings, low density, low fences, single-storey, front gardens, parking & carports to the side with no garage doors at street front and the stepping down of houses towards Griffiths Street.
- The majority of residents appreciate the character of the street and hope to see it better protected but do not feel that it is a heritage character.
- New Development: Most residents are open to new development on the street; they just feel it must be controlled in order to protect aesthetic character and amenity. “No McMansions” was a comment often made and 61% prefer policies that encourage the retention & redevelopment of existing properties over new development.

Corporate Planning and Strategy Division Report No. 42 (Cont'd)

- *Renovation:* Approximately 50% of households plan renovations and 78% thought it was important that they be able to develop their property for their personal needs.
- *Guidelines:* 72% of respondents agreed or strongly agreed that they **would support** streetscape guidelines if their concerns could be adequately addressed. 17% said they would **never support** streetscape guidelines.
- Houses are perceived to be highly important assets & there is strong concern that their value be protected & retained.

General Proposals:

As many residents and Council staff have noted, Boyle Street is not an unusual street in the Manly LGA but it has streetscape qualities highly valued by the majority of its residents and reflects a formative period in the development of Manly and the emergence of new influences in Australian vernacular architecture. Council has few tools with which to protect these qualities in Land and Environment Court. It has also been clearly demonstrated through consultation that most residents generally support the protection of those streetscape characters that they value, as long as the flexibility to alter their houses to meet their needs can also be retained. Therefore, the following general and LGA-wide recommendations can be made:

- That a revised Residential DCP contain stronger and more specific provisions to protect character and streetscape quality;
- That surveys and comprehensive community consultation be used regularly and as a matter of course when formulating policies on streetscape, character and potential heritage significance so that the balance between retaining character while allowing for individual development choice and modern architectural innovation is managed effectively.

Specific Proposals:

The following guidelines are modifications of those put forth for review of Council on 14th June and are based upon information gained from the survey on what streetscape features were identified as important by residents, either through specific questions in the survey or through supplementary comments.

Streetscape Element on Boyle Street:*Housing:*

Single-storey form: 61% of survey respondents thought the single-story nature of the street was important to its character and 50% thought that second storeys should be to the rear. There is, however, an apparent contradiction in this as privacy, sunlight & outdoor space were also rated highly but could potentially be reduced by second storeys to the rear (although many houses already have a rear ground floor addition thus have already reduced outdoor space). 22% of respondents specifically plan a second storey.

Architectural form & style: The large number of intact Californian Bungalows were cited by many to be an important feature of the street to be retained.

Proposed Design Codes:

- Second storeys be allowed to be visible from the street front but have a greater front setback than the ground floor and maintain the original front roofline & frame of original single-storey bungalow structures.
- For the heritage listed worker's cottages (33-45 Boyle Street), the single storey street frontage should be maintained and second storeys put to the rear with minimal visibility from the street as the single storey form is an important part of their significance.

Proposed changes be assessed for compatibility based upon Council's Housing Styles Guidelines (currently being developed for LGA-wide use) which will, in the case of Californian Bungalows, include retention of open front gardens, low fencing and open verandahs.

Corporate Planning and Strategy Division Report No. 42 (Cont'd)

Parking, carports, driveways and garages:
Several respondents commented that the established pattern be maintained to avoid the street being overwhelmed by parking structures or garages in front of the building line.

- Where possible, parking be to the side of the house, not in the front garden.
- Where possible, carports be wholly to the side/rear and not blocking any front portion of the dwelling or destroying mature plantings.
- Driveways should be to the side consistent with the established pattern on the street.
- Enclosed garages or garage doors at street front should not be allowed.

New Housing: *44% of respondents think that new development could have a negative impact on the street and potentially on their property while 33% are not concerned. Greatest concern was expressed about developer-driven development. People generally trust themselves & their neighbours to protect streetscape & amenity of neighbouring property but feel that developers are not similarly concerned. The DCP already requires new development to respond to existing development & not have a negative impact on streetscape but this tends to be overshadowed by codes that are quantifiable, such as FSR & setbacks.*

- It is recommended that proposals continue to be evaluated with high consideration for streetscape and that general streetscape guidelines be strengthened LGA-wide through revision of the Residential DCP.

“Stepping Down” Element

“Stepping Down” Element: *The way the buildings “step-down” the slope of Boyle towards Griffiths Street*

This be retained by retaining existing uniform roof style (particularly pitch and overhang) with greater second storey setbacks in order to maintain the stepping down and the integrity of the original bungalow structure.

Density & Subdivision:

Mature plantings along the verge of Boyle Street contribute to its heritage character as an established street with a strong sense of place

Street trees along the verges should be assessed for their heritage value & listed if they are significant (none are currently listed).

Conclusion

Based on the survey findings, it can be concluded that many (but not all) residents are concerned about streetscape quality, and the features that many have identified as important could be protected through design provisions. However, opinion is mixed on the relative merits of introducing provisions specific to Boyle Street.

Corporate Planning and Strategy Division Report No. 42 (Cont'd)

RECOMMENDATION

1. That the proposed guidelines be recognised to be potentially applicable in a number of streets in Manly LGA, not just Boyle Street, and broader community consultation is required.
2. That guidelines on the protection of streetscape and character be prepared for more general application as part of the revised Residential DCP.

ATTACHMENTS

There are no attachments for this report.

PS080805CPSD_3.DOC

***** End of Corporate Planning and Strategy Division Report No. 42 *****

TO: Planning and Strategy Committee - 8 August 2005
REPORT: Corporate Planning and Strategy Division Report No. 43
SUBJECT: Items for Brief Mention - Minutes for Adoption by Council - Special Purpose Committees and Joint Committees
FILE NO:

1. Minutes Of Meetings:

- (i) Manly Harbour Foreshores Management Committee - Minutes of a Meeting Held on 21st June, 2005.
- (ii) Manly Heritage Committee - Minutes of a Meeting Held on 6th July, 2005.
- (iii) Manly Scenic Walkway Committee - Minutes of a Meeting Held on 19th July, 2005.
- (iv) Landscape Management and Urban Design Committee - Minutes of a Meeting Held on 20th July, 2005.
- (v) Manly Traffic Committee - Minutes of a Meeting Held on 25th July, 2005.

2. The following Minutes contain recommendations of a substantial nature requiring formal Council adoption as follows:-

- (a) Manly Harbour Foreshores Management Committee - Minutes of a Meeting Held on 21st June, 2005

Item 4.7 - Beach Nourishment Manly Cove East

Recommendation:

"TMG Holdings to present findings of scoping report for erosion at Manly Cove East at 16th August, 2005 Manly Harbour Foreshores Management Committee meeting."

- (b) Manly Scenic Walkway Committee - Minutes of a Meeting Held on 19th July, 2005

Item 4.6 - Proposed Parallel Bike Path Between Lauderdale Avenue and Bolingbroke Parade

Recommendation:

"1. Manly Scenic Walkway – East/West Cycle Link

That the Manly Scenic Walkway Committee strongly objects to the resolution passed at the Planning and Strategy meeting held on the 18 July for the proposed parallel cycle path to be constructed contrary to both public forums that have been held and the Manly Scenic Walkway Plan of Management. The Committee also strongly objects to the waste of rate payers and voters money on commissioning the report that does not have the community support, and has not followed public democratic process.

2. Bolingbroke Parade – Vehicular Access Issue

That in regard to the Bolingbroke Parade vehicular access issue, the Committee upholds its previous resolution that cars should be removed from walkway."

Corporate Planning and Strategy Division Report No. 43 (Cont'd)

- (c) Landscape Management and Urban Design Committee - Minutes of a Meeting Held on 20th July, 2005

Item 4.1 - A Plan for The Corso - Update

Recommendation:

- "1. That the Landscape Management & Urban Design Committee endorse the following three consultants/consultant teams as recommended by the Landscape Management and Urban Design Committee to undertake a Plan for The Corso.
 - Hassell Pty Ltd;
 - Professor Tom Heneghan, The Architect Factory in conjunction with Taylor Brammer (Landscape Architects) and Neustein Rosenberg, Architects; and
 - Taylor, Cullity, Lethlean
2. That the Landscape Management & Urban Design Committee review the three final submissions by the consultants/consultant teams and recommend on a future public communication strategy.
3. That the sub-committee continue its role in overseeing the upgrading of The Corso and form a representative group to liaise with staff and the selected consultants if this is deemed appropriate to facilitate."

- (d) Landscape Management and Urban Design Committee - Minutes of a Meeting Held on 20th July, 2005

Item 4.2 - Fairlight Urban Improvements Proposal - Update

Recommendation:

"That the Landscape Management & Urban Design Committee support the planned community meetings and it was agreed to report back to the next Landscape Management & Urban Design Committee meeting in September on the response to the improvement plans by the community."

RECOMMENDATION

1. That the recommendations of Minutes of Meetings, as listed in Item 1 above, being 1(i) to 1(v), be adopted.
2. That in relation to all matters of a substantial nature listed in Item 2 above, being 2(a) to 2(d), be adopted as per the recommendation of the Committees.

ATTACHMENTS

There are no attachments for this report.

PS080805CPSD_1.DOC

***** End of Corporate Planning and Strategy Division Report No. 43 *****

TO: Planning and Strategy Committee - 8 August 2005
REPORT: Corporate Planning and Strategy Division Report No. 44
SUBJECT: Planning Controls for Telecommunications and Radiocommunications Facilities
FILE NO:

SUMMARY

The location, design and concern about health risks associated with proliferation and deployment of telecommunication facilities are matters of concern for the community and Council.

This report proposes action which is intended to provide guidance to carriers on the matters to be addressed when preparing proposals for these facilities with a view to reducing negative environmental impacts.

REPORT

Background

At its Ordinary Meeting on 21 February 2005, Council resolved:

1. *That Manly Council as a matter of policy notify without delay all Councillors and Precinct forums upon receipt of an Application or Notification from a Telecommunication or Radiocommunication provider to install additional or new infrastructure to an existing transmitter facility (Base Station) or a new site.*
2. *That if a notification is received by Council from a Telecommunications or Radiocommunication provider, this notification be provided (via the Council Liaison Officer) to relevant Precinct forums and all Councillors.*
3. *A further report be brought back to Council on:*
 - (i) *the latest evidence regarding electromagnetic emissions of transmitter facilities in the Manly LGA;*
 - (ii) *the latest amendments to the Telecommunications (low impact facilities) Determination Act of 1997.*
4. *That Council seek the support of our Federal MP, the Hon Tony Abbott, MHR to have the Commonwealth require 'Telcos' to notify relevant Local Government whenever a low impact facility is planned for installation or expansion.*

In relation to resolution number 3 above, Council considered a report at its Planning and Strategy Committee meeting on 9 May 2005. A presentation was given by Dr Tony Cripps, a member of the Scientific Advisory Panel, providing information on the latest research on public health hazard associated with electromagnetic radiation (EMR) exposure. In summary, Dr Cripps' presentation concluded that:

- research shows no demonstrable harm at exposure level based on Australian and World Health Organisation (WHO) standards;
- precautionary principle is and should be prudently observed;
- Council has little alternative other than to comply with and observe the law in relation to the base station installations.

Corporate Planning and Strategy Division Report No. 44 (Cont'd)

At the meeting of 9th May, 2005, it was resolved:

1. *That Council receive and note the information provided by Dr. Cripps in response to Council's resolution and provide copies of this information to all interested parties with particular emphasis on the sources of reliable information on the subject.*
2. *That Council reaffirms its previous codes and policies particularly in relation to location and notification of mobile phone base stations.*
3. *That Council officers bring back a report to council on the merits of existing DCPs in other metropolitan local government areas.*

This report addresses resolution no. 3 above.

Introduction

Despite the obvious benefits brought about by technological advancements in telecommunication and radiocommunications facilities, there is public concern on the impact or potential impact of these facilities. These concerns are mainly related to the following aspects:

- the potential health hazard or cancer risk associated with EMR;
- the negative visual amenity as a result of the location and design of telecommunication towers

In relation to the issue of potential health implication, the presentation from Dr Tony Cripps to the Council on 9 May 2005 provided results of latest research and concluded that precautionary principles should be carefully observed when deploying telecommunication facilities.

The negative amenity impact due to inappropriate location and design of are usually aspects of local relevance and under normal circumstances could be easily regulated and enforced through local planning instruments. However, Commonwealth legislation on telecommunication facilities, namely the *Telecommunication (Low Impact Facilities) Determination 1997*, has overridden the power of local councils across Australia to require development consent for 'low impact' facilities, which include most mobile telephone base stations, except for defined "environmentally sensitive areas", in which case the facilities cannot be low-impact by definition.

From the community point of view, this Commonwealth government intervention has led to a proliferation of mobile phone base stations that are inconsistent with the character of the existing buildings and the character of the area, affecting their property values. There are also concerns about the location of these towers, especially when it is close to environmentally sensitive sites (eg. heritage buildings, conservation areas) or in areas frequented by children or people with health problems (eg. schools, childcare centres, hospitals, nursing homes).

In response to the amenity concern, a working group was formed by the Sutherland Shire, Woollahra and Ashfield Councils, culminating in the development of a Model Development Control Plan (DCP) on telecommunications and radiocommunications facilities. The DCP was completed in May 2003 and has been adopted by these three Councils, as well as other councils in NSW (Leichhardt, Waverley, Canterbury, Holroyd and Hurstville to name a few). In the case of Waverley Council, a further requirement was added to impose a 300m exclusion zone around all primary schools within the LGA. A copy of the model DCP is **attached**.

Corporate Planning and Strategy Division Report No. 44 (Cont'd)**Legislative Context for Telecommunications and Radiocommunications Facilities**

The current regulations on telecommunications and radiocommunications facilities are complex and spread throughout the 3 levels of government and the telecommunication industry. An overview of the legislations is provided below:

1. Commonwealth Legislation

- Radiocommunications Act 1992
- Telecommunications Act 1997
- Telecommunications Code of Practice 1997
- Telecommunications (Low-Impact Facilities) Determination 1997

This legislation establishes mandatory standards for emission levels to ensure public health is protected. They also establish a system for licensing of carriers.

Specifically the Telecommunications (Low-Impact Facilities) Determination 1997 distinguishes “low impact facilities from “other facilities”. The classification relates mainly to visual appearance and size, rather than emission level. The effect of the Determination is that “low impact facilities” are exempted from most planning laws, but carriers are still required to comply with the relevant legislative controls under the Commonwealth Acts and Code of Practice.

2. Telecommunications Industry Code of Practice

- Deployment of Radiocommunications Infrastructure 2004 – industry code developed by the Australian Communications Industry Forum (ACIF)

The Code derives its authority from the Telecommunications Act 1997 and applies only to telecommunication carriers and their infrastructure. It spells out the following obligations of carriers when deploying telecommunication facilities:

- apply a precautionary approach to site selection and design and operation of infrastructure;
- consult with councils and communities for the siting of the facilities;
- consider submissions received from the public and Council before commencing the work.

While this Code does not change the statutory exemption from obtaining development consent, the obligations in the Code are legally binding under the Telecommunications Act, which requires strict adherence by carriers.

3. NSW State Government

- Environmental Planning and Assessment Act 1979
- Local Government Act 1993
- Planning NSW Telecommunication Guidelines

State legislation has no power to override Commonwealth legislation and therefore is only capable of regulating those facilities that require development consent. The above legislation is focused mainly on the planning and design of telecommunication towers, and to ensure cultural and environmental values are not comprised as a result of these developments.

Corporate Planning and Strategy Division Report No. 44 (Cont'd)**4. Local Government**

- Manly LEP 1988 – requires consent for certain types of telecommunications and radiocommunications facilities. There is no separate provision in the LEP to regulate telecommunication facilities.
- There is currently no specific DCP in Manly

Within this context, a DCP for Manly LGA will function as an alternative layer of control that takes into account local constraints and community interests. It is important to note that any local government controls are applicable only to those facilities which are not “low impact facilities” and would serve as non statutory guidelines for “low impact facilities”.

Previous Applications for Telecommunication Facilities**1. Facilities which are not Low Impact facilities**

There are no recent applications.

2. Low Impact Facilities

Within the past 3 years, Council has received numerous advices regarding the deployment of low impact telecommunication facilities in various locations throughout the LGA. The most controversial ones include:

- Balgowlah Boys High School
- Co-location for several facilities in Tania park
- Seaforth Oval
- Balgowlah Bowling Club

The key issue facing Council is the number and proliferation of low impact facilities. Controlling the number of transmission towers is outside the jurisdiction of local government, except through written objection to carriers when a notification is received.

Preparation of a new DCP – Merits and Limitations

As mentioned earlier, some Councils across NSW have implemented a DCP (based on the model DCP) to regulate telecommunications facilities.

The purpose of the Model DCP is to:

- provide a consistent and integrated planning framework that addresses the community’s interests in the provision of telecommunications and radiocommunications infrastructure to achieve environmental, economic and social sustainability outcomes in the short, medium and long term;
- provide a consistency of approach which benefits carriers, community and councils;
- balance the needs of different stakeholders, including the community/industry/ local, state and federal governments, and
- provide guidance to carriers about council’s requirements for site selection, application lodgment and community consultation.

Within the existing legislative framework, a DCP on telecommunication facilities will only act as a guiding document outlining Council’s expectations in the deployment of these facilities. It cannot override Commonwealth laws that exempt low impact facilities from planning controls.

Corporate Planning and Strategy Division Report No. 44 (Cont'd)

On the other hand, a DCP can:

- provide carriers with Council's expectations upfront and seek voluntary compliance with these expectation; and can be
- used as a basis for Council's submission when a notification is received;

Conclusion

Past experience reveals that most facilities built in Manly are telecommunications facilities (as opposed to radiocommunications) classified as "low impact".

The proliferation of these facilities in Manly has created concern among the community in regard to health, amenity and visual character. Council has signaled its intention to take a more proactive approach to influence deployment of future facilities. However the Commonwealth legislation and the Industry code substantially limit Council's power to regulate these facilities.

It is considered that Council should proceed to exhibit the Model Development Control Plan for public comment although once adopted it would have only limited effect from a statutory planning perspective. Also, the opportunity exists for Council to consult with the carriers on the provisions of the Development Control Plan and to achieve a higher level of co-operation and acknowledgment of the community concerns regarding these facilities, as a step towards addressing this long-standing issue.

RECOMMENDATION

1. That Council exhibit the Model Development Control for Telecommunications and Radiocommunication Facilities for public comment in accordance with the provisions of the EPA Act, 1979.
2. That Council support establishment of a consultation process with the telecommunications carriers to explore best practice arrangements for the planning, design, location and use of telecommunication installations in Manly for the benefit of the community and the environment.

ATTACHMENTS

AT-1 Model Telecommunications and Radiocommunications DCP 31 page(s)

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***** End of Corporate Planning and Strategy Division Report No. 44 *****

**MODEL TELECOMMUNICATIONS
AND
RADIOCOMMUNICATIONS DCP**

**Prepared by a Local Government & Community Working Group
12 May 2003**

For consideration by Councils

ATTACHMENT 1

Corporate Planning and Strategy Division Report No. 44 Planning Controls for Telecommunications and Radiocommunications Facilities Model Telecommunications and Radiocommunications DCP

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1.0 Introduction

This DCP applies to telecommunications and radiocommunications infrastructure (including broadcasting infrastructure covered under the *Telecommunications Act 1997* and the *Radiocommunications Act 1992*).

Councils are the consent authority for facilities that require development consent under the terms of the *Environmental Planning and Assessment Act 1979*. These are the facilities that are referred to as “not low impact facilities”.

Councils do not have regulatory control over “low impact facilities”. These are facilities described in the *Telecommunications (Low Impact Facilities) Determination 1997* (LIF Determination - see **Appendix 1**) which exempts low impact facilities from State and Territory planning and environmental laws.

This DCP provides:

- controls for the siting, design and installation of telecommunications and radiocommunications facilities that require development consent from Council, and
- guidelines for telecommunications carriers for the siting, design and installation of “low impact” facilities.

2.0 Definitions

The terms, used in this document, have the following meanings. The definitions included here are for purposes of clarification only and do not supplant the definitions in legislation.

Applicant	applies to infrastructure providers and their agents
Co-located facilities	one or more facilities on or within an original facility or a public utility structure
Co-siting	the siting of a number of telecommunication facilities, often owned by different carriers, in one location
Cumulative impact	the impact of radiation from various sources or over time
Electromagnetic radiation (EMR)	the radiation in the microwave and radiofrequency band of the electromagnetic spectrum
Low impact facility (LIF)	a facility that is exempted from state and council local planning under the <i>Telecommunications (Low-impact Facilities) Determination 1997</i> . For guidance, see Appendix 1.
Radiocommunications facility	a base station or radiocommunications link, satellite-based facility or radiocommunications transmitter
Telecommunications facility	any part of the infrastructure of a Telecommunications Network. It includes any telecommunications line, equipment, apparatus, telecommunications tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or for use in connection with a Telecommunications Network.
Telecommunications Network	a system, or series of systems, that carries, or is capable of carrying, communications by means of guided and/or unguided electromagnetic radiation

3.0 Where does this plan apply?

This plan applies to all land (or specify which zones) within X Council.

4.0 To what facilities does this plan apply?

This plan applies to any fixed transmitter, its supporting infrastructure and ancillary development under the following legislation:

- *Telecommunications (Low-impact Facilities) Determination 1997* [LIF Determination];
- *Telecommunications Act 1997*, and
- *Radiocommunications Act 1992*.

This DCP provides:

- controls for the siting, design and installation of telecommunications and radiocommunications facilities that require development consent from Council, and
- guidelines for telecommunications carriers for the siting, design and installation of other, including “low impact”, facilities.

The DCP does not apply to temporary emergency services.

For guidance on the nature of facilities classified as “Low Impact” under the LIF Determination 1997, see **Appendix 1**.

5.0 What is the purpose of this plan?

The purpose of this plan is:

- to provide a consistent and integrated planning framework that addresses the community’s interests in the effective and efficient provision of telecommunications and radiocommunications infrastructure so that it achieves environmental, economic and social sustainability in the short, medium and long term;
- to provide a consistency of approach which benefits carriers, community and councils;
- to balance the needs of different stakeholders, including the community/industry/local, state and federal governments, and
- to provide guidance to carriers about council’s requirements for:
 - site selection
 - lodging an application
 - conducting community consultation.

6.0 What are the objectives of this plan?

The objectives of this plan are:

6.1 social

- to apply a precautionary approach to the deployment of radiocommunications infrastructure;

- to minimise EMR exposure to the public;
- to avoid community sensitive locations;
- to ensure that the general public and local communities have access to telecommunications technology;
- to achieve equity for the various stakeholders by endeavouring to balance their various needs;
- to enable members of the public to adequately identify infrastructure and the agencies responsible for them;
- to provide mechanisms by which information can be disseminated to ensure that the community is adequately informed and empowered to participate in the planning/decision-making process;

6.2 *environmental*

- to help implement principles of urban design in respect to telecommunications and radiocommunications infrastructure;
- to promote good industrial design of infrastructure;
- to provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons;
- to minimise adverse impacts on the natural environment;
- to assess whether the proposed infrastructure is consistent with the amenity of the area;
- to restore the site after discontinuation or removal of infrastructure;

6.3 *economic*

- to identify the type of land use areas suitable for infrastructure in a local government area;
- to accommodate the planning requirements of new technology;
- to provide equitable availability of locations to carriers;
- to assess whether the proposed infrastructure is consistent with permitted development in adjacent areas;
- to ensure reasonable access to telecommunications technology;
- to provide certainty for stakeholders and a consistent approach to the implementation/assessment of telecommunications infrastructure, and

6.4 *administrative*

- to ensure that Council obtains information about existing and proposed infrastructure to assist with strategic planning.

7.0 How does this plan relate to other plans/legislation?

7.1 Commonwealth legislation

7.1.1 Telecommunications Act 1997

The Telecommunications Act establishes a regime for Carriers' rights and responsibilities when inspecting, maintaining or installing telecommunications facilities.

This DCP clarifies the expectations of Council on carriers who operate under the Act.

7.1.2 Radiocommunications Act 1992

The Radiocommunications Act 1992 regulates radiocommunications transmitters. It provides for the licensing of radiocommunications equipment and applies mandatory standards to its use.

This DCP clarifies the expectations of Council on carriers who operate under the Act.

7.1.3 Telecommunications Code of Practice 1997

The Telecommunications Code of Practice 1997 establishes obligations on carriers in land-access situations such as when inspecting land, installing low-impact facilities and maintaining facilities. It also requires carriers to comply with recognised industry codes and standards.

This DCP clarifies and standardises the expectations of Council in respect to land-access situations.

7.1.4 Telecommunications (Low-impact Facilities) Determination 1997

The Telecommunications (Low-impact) Facilities Determination 1997 exempts telecommunications infrastructure classified as "low impact" from compliance with state and local government regulations. This classification relates primarily to visual appearance and size, rather than emissions.

This DCP applies to both low impact and not-low-impact facilities. While the DCP does not have the authority to override the LIF Determination, it nevertheless provides advice to carriers about the expectations of Council and requests their voluntary co-operation.

7.1.5 Code for the Deployment of Radiocommunications Infrastructure (ACIF, 2002)

This Code (Appendix 2) derives its authority from the Telecommunications Act 1997 and applies only to telecommunications carriers and their infrastructure. It does not apply to other broadcasters, councils or other agencies. It requires carriers to apply a precautionary approach to site selection and the design and operation of infrastructure; to consult with councils and communities regarding siting; to provide information to the public and to implement a complaints handling procedure. It applies to both low impact and not-low-impact facilities.

This DCP broadens the scope of the ACIF Code by applying consistently not only to carriers and their agents, but also to builders and operators of all EMR-emitting infrastructure, including those operating under the Radiocommunications Act 1992.

7.2 New South Wales State Government

7.2.1 Environmental Planning and Assessment Act 1979 (as amended)

To meet Council's obligations to achieve environmental, economic and social sustainability.

7.2.2 Local Government Act 1993 (as amended)

This DCP assists Council to fulfil its obligations under the *Local Government Act 1993* by having regard to the principles of ecologically sustainable development, including application of the precautionary principle.

7.2.3 Planning NSW Draft Telecommunications Guidelines

PlanningNSW has introduced guidelines for councils in respect to telecommunications infrastructure. The purpose of these guidelines is to provide advice on appropriate and consistent planning controls for telecommunications facilities across the state. The guidelines also seek to promote an approach that provides for better information, education and communication.

This DCP employs the principles of good urban design outlined by the NSW Government.

7.3 NSW Local Government

7.3.1 Council's planning instruments, codes, policies and statutory requirements

Under Council's planning instruments, codes, policies and statutory requirements, consent for certain types of telecommunications or radiocommunications facilities is required.

<Insert reference to specific council planning instruments, codes, policies and statutory requirements .>

7.4 Relevant standards

Facilities are required under this DCP to comply with relevant Australian standards.

8.0 Does your proposal need council consent?

- By law, new infrastructure requires Council approval unless it is exempted by other legislation such as the LIF Determination or is classified as exempt or complying development in Council's Local Environmental Plan.
- Development consent is not required for low-impact facilities. However, as part of a carrier's consultation obligations, Council requires a written submission demonstrating compliance with the relevant sections of the ACIF Code and provision of the information listed in the checklist at **Appendix 3**.

9.0 Making an application

9.1 Lodgement Requirements

- The infrastructure provider is to provide information as requested by Council about the applicant's existing infrastructure in the area to assist with consideration of this application.

- The applicant is to provide Council with:
 - its rationale for deciding whether the proposal is low or a non-low-impact facility;
 - an EMR assessment in accordance with the ARPANSA prediction methodology and report format as described in the ACIF Code;
 - a 360° prediction map of exposure levels at 1.5m above publicly accessible surfaces within 300 m and listed as a likely community sensitive location at 5.1(c) in the ACIF Code, or for other sites upon request.
 - the information listed in the checklist (see **Appendix 3**);
 - photo montage of the proposed facility in context of the location.
 - the results of any community consultation process, consistent with requirements in the ACIF Code for a low impact facility
 - statement of environmental effects
 - site and locality analysis.
- Upon request, the applicant is to provide extra documentation such as a heritage report/impact statement, should the site be identified as located within an area of environmental significance.
- The Mobile providers must provide compliance evidence that indicates that exposure details contained in the application are true and accurate, consistent with the ACIF Code. Other radiocommunication infrastructure providers must provide an EMR compliance certificate as to exposure details in the application.

9.2 Site and Locality Analysis

A site and locality analysis establishes the development context by showing graphically the constraints and opportunities of the proposed site in relation to existing land uses and existing buildings in the immediate surroundings and the environment generally. It should influence the suitability of the proposed location and the design.

A site and locality analysis plan is to be submitted with all applications and should indicate in relation to the proposed site for a radius of 300 metres:

- existing vegetation
- site boundaries and dimensions
- topography
- location of existing buildings
- views to and from the proposed site; and
- location of any sensitive land use within the adjacent area.

The site and locality analysis must be to scale.

9.3 Statement of Environmental Effects

A written statement is to be prepared and must explain how the proposed radiocommunications or telecommunications facility has responded to the site analysis and the objectives of this DCP.

This statement is to demonstrate how the precautionary principle has been applied in the siting, design and operation of the proposed facility, included in Sections 5.1, 5.2 and 5.7 of the ACIF Code.

10.0 Public notification/consultation

- Development applications should comply with Council's requirements on notification and signage.
- For facilities covered by the LIF Determination, the carrier is to consult with affected community, irrespective of Council boundaries, as required by the ACIF Code.
- The applicant is to consult with Council about a consultation strategy.
- Consultation must be commensurate with the anticipated impact of the facility.
- The applicant must make reasonable endeavours to conduct consultation in such a way that local ethnic communities are informed about the proposal and able to comment on it.
- For each facility, a permanent and legible weatherproof sign must be publicly visible in the immediate proximity of the facility and visible to the general public, to identify the name and contact details of the operator or site manager, consistent with the ACIF Code.
- For each facility, a sign must be erected notifying the intention of the carrier to erect infrastructure on site and providing the name and contact details of the carrier, consistent with the ACIF code.
- The applicant must provide council with the results of its community consultation undertaken for facilities covered by the LIF Determination.

11.0 Design Controls

11.1 Visual amenity

- Carriers are to design antennas and supporting infrastructure in such a way as to minimise or reduce the visual and cumulative visual impact from the public domain and adjacent areas.
- Within the local context, the infrastructure design must take account of:
 - colour;
 - texture;
 - form;
 - bulk and scale.
- Infrastructure must:
 - be well-designed;
 - be integrated with the existing building structure unless otherwise justified in writing to Council;
 - have concealed cables where practical and appropriate;
 - be unobtrusive where possible, and

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- be consistent with the character of the surrounding area.

A discussion on facility design can be found in *Low Impact Facilities for Better Visual Outcomes* that can be accessed at www.amta.org.au/mcf

- Infrastructure must be removed when no longer being used.
- The site must be restored following construction of the infrastructure.

11.2 Co-location

- Co-location is the practice of locating a number of different telecommunication facilities, often owned by different carriers, on one facility or structure.
- Co-location may not always be a desirable option where:
 - cumulative emissions are a consideration;
 - it may be visually unacceptable;
 - there are physical and technical limits to the amount of infrastructure that structures are able to support, or
 - the required coverage cannot be achieved from the location.
- Carriers should demonstrate a precautionary approach and effective measures to minimise the negative impacts of co-location.

11.3 Location

- The applicant should demonstrate that, in selecting a site, it has adopted a precautionary approach in regards to minimising EMR exposures consistent with Section 5.1 of the ACIF Code.
- Preferred land uses (as determined by this council) include:
 - industrial areas;
 - rural areas;
 - low-use open space, and
 - commercial centres.
- The applicant should demonstrate particular consideration of likely sensitive land uses. Sensitive land uses may include areas:
 - Where occupants are located for long periods of time (e.g. residences);
 - that are frequented by children (eg schools, child care centres), and
 - where there are people with particular health problems (eg hospitals, aged care facilities).

Further information can be found in the ACIF Code at Section 5.1.4.

11.4 Heritage and Environment

Infrastructure proposed for areas of environmental significance (as defined in LIF Determination) require:

- development consent under the LIF Determination and Council's LEP;

- the applicant to have regard to avoiding or minimising the visual impact of any proposed facility on the heritage significance of adjacent/adjoining/surrounding heritage items and conservation areas;
- the applicant is to provide a heritage report/impact statement in accordance with Council's LEP/DCP, and
- the applicant to have regard to avoiding or minimising the physical impact of any proposed facility on endemic flora and fauna.

11.5 Facility physical design controls

- Infrastructure must be of high quality design and construction.
- Proposals should consider the range of available alternate infrastructure including new technologies, to minimise unnecessary or incidental EMR emissions and exposures, as required under Section 5.2.3 of the ACIF Code.
- The plan for the facility must include measures to restrict public access to the antenna(s). Approaches to the antenna(s) must contain appropriate signs warning of EMR and providing contact details for the facility(ies) owner/manager.
- The minimum requisites that shall apply where relevant are the BCA for purposes of construction and the relevant exposure levels as directed by the Australian Communications Authority (ACA). The applicant must provide Council with certification about the standards with which the facility will comply.

11.6 Facility health controls

- The applicant is to demonstrate the precautions it has taken to minimise EMR exposures to the public.
- The applicant is to provide documentation to show that the proposed facility complies with the relevant Australian exposure standard as specified by the ACA.
- The applicant is to provide a mapped analysis of cumulative EMR effect of the proposal (as per *Section 9.0 - Making an Application*).

12.0 Conditions of DA approval

The applicant is advised that the approval may be subject to a number of conditions, including but not restricted to the following:

- the applicant is responsible for the maintenance and upgrading of infrastructure and the maintenance of the site;
- the applicant, should any emissions other than electromagnetic radiation arise from the installation and operation of the infrastructure, is to notify Council and the EPA and to recommend a preferred strategy of amelioration;
- infrastructure must be removed when it is no longer in use;
- For each facility, a permanent and legible weatherproof sign must be publicly visible in the immediate proximity of the facility to identify the name and contact details of the operator or site manager.

Appendix 1 Low impact Determination

Commonwealth of Australia

**Telecommunications (Low-impact Facilities)
Determination 1997 (as amended)**

I, RICHARD KENNETH ROBERT ALSTON, Minister for Communications and the Arts, acting under subclause 6(3) of Schedule 3 to the *Telecommunications Act 1997* and section 4 of the *Acts Interpretation Act 1901*, make the following determination.

Dated 1997

Minister for Communications, Information Technology and the Arts

Part 1 – Preliminary

1.1 Citation

This determination may be cited as the Telecommunications (Low-impact Facilities) Determination 1997.

1.2 Commencement

This determination commences on 1 July 1997. Amendment No. 1 commences on gazettal.

[Note: See *Acts Interpretation Act 1901*, ss. 46A and 48.]

Background to determination

Part 1 of Schedule 3 to the Telecommunications Act 1997 authorises a carrier to enter on land and install a facility if the facility is a low-impact facility.

Under subclause 6(3) of Part 1, the Minister may, by written instrument, determine that a specified facility is a low-impact facility.

Under subclauses 6(4), (5) and (7), certain facilities cannot be low-impact facilities:

- designated overhead lines
- a tower that is not attached to a building
- a tower attached to a building and more than 5 metres high
- an extension to a tower that has previously been extended
- an extension to a tower, if the extension is more than 5 metres high.

A facility cannot be a low-impact facility unless it is specified in this determination. Therefore, overhead cabling and new mobile telecommunications towers are not low-impact facilities.

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Also, a facility will be a low-impact facility only if it is installed in particular areas identified in this determination. The areas have an order of importance, based on zoning under State or Territory laws, so that any area only has its "highest" possible zoning. The order of priority is:

- area of environmental significance
- residential areas
- commercial areas
- industrial areas
- rural areas.

One effect of this determination is that a facility in an area of environmental significance cannot be a low-impact facility.

Rules for the installation and maintenance of a low-impact facility can be found in Schedule 3 to the Telecommunications Act and the Telecommunications Code of Practice 1997.

Simplified outline of determination

The determination has 3 Parts.

Part 2 identifies areas in which a facility may be installed, by reference to zoning arrangements under State and Territory planning laws.

Part 3 and the Schedule identify the low-impact facilities.

Definitions for words and expressions used in this determination are to be found in section 1.3.

1.3 Definitions

In this determination:

Aboriginal person has the same meaning as in Schedule 3 to the Act;

Act means the *Telecommunications Act 1997*;

area of environmental significance has the meaning given by section 2.5;

co-located facilities means one or more facilities on or within:

- (a) an original facility; or
- (b) a public utility structure.

commercial area has the meaning given by section 2.1;

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emergency, for the installation of a facility, means circumstances in which the facility must be installed without delay to protect:

- (a) the integrity of a telecommunications network or a facility; or
- (b) the health or safety of persons; or
- (c) the environment; or
- (d) property; or
- (e) the maintenance of an adequate level of service;

emergency services organisation has the same meaning as in subsection 265(11) of the Act;

Note: At the commencement of this determination, the emergency service organisations were:

- a police force or service
- a fire service
- an ambulance service
- a service specified in the numbering plan (see Act, s 455) as an emergency services organisation
- a service for despatching the force or service.

in-building subscriber connection equipment means a facility installed within a building with the aim of managing and maintaining the supply of carriage services to a customer of a carrier;

industrial area has the meaning given by section 2.2;

installation, for a facility, has the same meaning as in Part 1 of Schedule 3 to the Act;

Note: Installation includes:

- construction of the facility
- attachment of the facility to a building or other structure
- any activity ancillary to installation.

listed international agreement has the same meaning as in Schedule 3 to the Act;

Note: Listed international agreements are agreements specified in the regulations.

Nature Conservation Director means the Director of National Parks and Wildlife under the *National Parks and Wildlife Conservation Act 1975*;

original facility means the original structure that is currently used, or intended to be used, for connection to a telecommunications network where the original structure was:

- (a) in place on the date on which the Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No 1 of 1999) took effect; or
- (b) installed after that date by means other than in accordance with Part 7 of the Schedule;

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planning law, for an area, means a law of the State or Territory where the area is located dealing with land use, planning or zoning;

principal designated use, for an area, has the meaning given by section 1.4;

public utility has the same meaning as in Schedule 3 to the Act;

public utility structure means a structure used, or for use, by a public utility, for the provision to the public of:

- (a) reticulated products or services, such as electricity, gas, water, sewerage or drainage; or
- (b) carriage services (other than carriage services supplied by a carriage service provider); or
- (c) transport services; or
- (d) a product or service of a kind that is similar to a product or service covered by paragraph (a), (b) or (c);

relevant local government authority, for land in a State or Territory, means an authority of the State or Territory responsible for the local government of the area where the land is located;

residential area has the meaning given by section 2.3;

rural area has the meaning given by section 2.4;

significant environmental disturbance means a significant interference with the relationship between a species or community and its immediate environment or habitat and includes, for example, significant interference with identified flora and fauna, ecological communities, geological features, wilderness values or scientific values within an area;

subscriber connection means an installation for the sole purpose of connecting premises to a telecommunications network;

Torres Strait Islander has the same meaning as in Schedule 3 to the Act;

tower means a tower, pole or mast;

Note: A number of other words and expressions used in this determination are defined in the Telecommunications Act 1997 (see s7), including "carrier" and "facility".

volume means the apparent volume of materials that constitute:

- (a) co-located facilities; or
- (b) an original facility; or
- (c) a public utility structure;

where the materials are visible from a point outside the co-located facilities, original facility or public utility structure.

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1.4 *Principal designated use*

- (1) If an area is described, under a planning law, as having a sole or principal use, the use is the *principal designated use* of the area.
- (2) If an area is described, under a planning law, as having 2 or more uses, in terms that show that 1 of the uses is the predominant, preferred or most likely use, the use is the *principal designated use* of the area.
- (3) If an area is described, under a planning law, as having 2 or more principal uses, without any indication of the predominant, preferred or most likely use, the *principal designated use* of the area is determined on the following basis:
 - (a) if the uses include residential purposes, the principal designated use is for residential purposes;
 - (b) if the uses include commercial purposes, but not residential purposes, the principal designated use is for commercial purposes;
 - (c) if the uses include industrial purposes, but neither residential nor commercial purposes, the principal designated use is for industrial purposes.
- (4) If a carrier proposes to engage in a low-impact facility activity in an area under Chapter 4 of the Telecommunications Code of Practice 1997, the principal designated use of the area is to be determined by reference to the time when the carrier proposes to issue the first notice to the owner or occupier of the land in the area under Part 5 of that Chapter.

Note: Areas of environmental significance are identified in accordance with section 2.5, not by reference to planning laws.

The effect of this determination is that an area may be an area of environmental significance, and also a residential, commercial, industrial or rural area identified by reference to planning laws. However, the area's status as an area of environmental significance is more important for the identification of low-impact facilities.

Part 2 – Areas

2.1 *Commercial area*

An area is a commercial area if its principal designated use is for commercial purposes.

Note: The use of an area is to be assessed at the time mentioned in subsection 1.4(4).

2.2 *Industrial area*

An area is an industrial area if its principal designated use is for industrial purposes.

Note: The use of an area is to be assessed at the time mentioned in subsection 1.4(4).

2.3 *Residential area*

- (1) An area is a residential area if its principal designated use is for residential purposes.
- (2) A part of a built-up area is a residential area if it cannot otherwise be described as a commercial, industrial or rural area.

Note: The use of an area is to be assessed at the time mentioned in subsection 1.4(4).

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2.4 Rural area

- (1) An area is a rural area if its principal designated use is for rural purposes.
- (2) An area that is not part of a built-up area is a rural area if it cannot otherwise be described as commercial, industrial or residential area.

Note: The use of an area is to be assessed at the time mentioned in subsection 1.4(4).

2.5 Area of environmental significance

- (1) An area is an area of environmental significance if it is identified property for section 3A of the *World Heritage Properties Conservation Act 1983*.
- (2) An area is an area of environmental significance if it is an identified property (within the meaning of section 3A of the *World Heritage Properties Conservation Act 1983*).
- (3) An area is an area of environmental significance if it is a place that Australia is required to protect by the terms of a listed international agreement.
- (4) An area is an area of environmental significance if, under a law of the Commonwealth, a State or a Territory:
 - (a) it is designated as a reserve for nature conservation purposes; and
 - (b) the principal purpose of the designated reserve is for nature conservation.
- (5) An area is an area of environmental significance if it is an area that, under a law of the Commonwealth, or a State or Territory, is protected from significant environmental disturbance.
- (6) An area is an area of environmental significance if it is entered in the Register of the National Estate or the Interim List for that Register.
- (7) An area is an area of environmental significance if, under a law of the Commonwealth, a State or a Territory, it consists of a place, building or thing that is entered in a register relating to heritage conservation.
- (8) An area is an area of environmental significance if, under a law of the Commonwealth, a State or a Territory, it is:
 - (a) entered in a register; or
 - (b) otherwise identified;as being of significance to Aboriginal persons or Torres Strait Islanders, in accordance with their traditions.

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Part 3 – Low-impact facilities

3.1 Facilities

- (1) A facility described in column 2 of an item in the Schedule is a low-impact facility only if it is installed, or to be installed, in an area mentioned in column 3 of the item.
- (2) However, the facility is not a low-impact facility if the area is also an area of environmental significance.
- (3) For subsection (1), trivial variations for a facility mentioned in column 2 are to be disregarded.
- (4) A facility that is ancillary to a facility covered by subsection (1) is also a low-impact facility only if it is installed, or to be installed, solely to ensure the protection or safety of:
 - (a) the low-impact facility; or
 - (b) persons or property in close proximity to the low-impact facility.

SCHEDULE

Section 3.1

FACILITIES AND AREAS

PART 1 –RADIO FACILITIES

Column 1 Item no.	Column 2 Facility	Column 3 Areas
1	Subscriber connection deployed by radio or satellite terminal antenna or dish: <ul style="list-style-type: none"> (a) not more than 1.2 metres in diameter; and (b) either: <ul style="list-style-type: none"> (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority 	Residential Commercial Industrial Rural

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SCHEDULE

FACILITIES AND AREAS

PART 1 RADIO FACILITIES - continued

Column 1 Item no.	Column 2 Facility	Column 3 Areas
1A.	Subscriber connection deployed by radio or satellite terminal antenna or dish: (a) not more than 1.8 metres in diameter; and (b) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local government authority	Industrial Rural
2	Panel, yagi or other like antenna: (a) flush mounted to an existing structure; and (b) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority	Residential Commercial Industrial Rural

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SCHEDULE

PART 1 RADIO FACILITIES - continued

Column 1 Item no.	Column 2 Facility	Column 3 Areas
3	Panel, yagi or other like antenna: (a) not more than 2.8 metres long; and (b) if the antenna is attached to a structure – protruding from the structure by not more than 3 metres; and (c) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority	Residential Commercial Industrial Rural
4	An omnidirectional antenna or an array of omnidirectional antennas: (a) not more than 4.5 metres long; and (b) not more than 5 metres apart; and (c) if the array is attached to a structure – protruding from the structure by not more than 2 metres	Industrial Rural
5	Radio communications dish: (a) not more than 1.2 metres in diameter; and (b) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority; and (c) if attached to a supporting structure, the total protrusion from the structure is not more than 2 metres.	Residential Commercial Industrial Rural

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SCHEDULE

PART 1 RADIO FACILITIES - continued

Column 1 Item No	Column 2 Facility	Column 3 Areas
5A	Radio communications dish: (a) not more than 1.8 metres in diameter; and (b) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local government authority	Industrial Rural
6	Microcell installation with: (a) a cabinet not more than 1 cubic metre in volume; and (b) a separate antenna not more than 1 metre long	Residential Commercial Industrial Rural
7	In-building coverage installation: (a) to improve cellular coverage to mobile phone users operating inside a building; and (b) wholly contained and concealed in a building	Residential Commercial Industrial Rural
8	Equipment installed inside a structure, including an antenna concealed in an existing structure.	Commercial Industrial Rural
9	An extension to a tower if: (a) the height of the extension does not exceed 5 metres; and (b) there have been no previous extensions to the tower	Industrial Rural

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**SCHEDULE – continued
 PART 2 UNDERGROUND HOUSING**

Column 1 Item No	Column 2 Facility	Column 3 Areas
1	Pit with surface area of not more than 2 square metres	Residential Commercial Industrial Rural
2	Manhole with surface area of not more than 2 square metres	Residential Commercial Industrial Rural
3	Underground equipment shelter or housing with surface area of not more than 2 square metres	Residential Commercial Industrial Rural

PART 3 ABOVE GROUND HOUSING

Column 1 Item No	Column 2 Facility	Column 3 Areas
1	Pillar: (a) not more than 2 metres high: and (b) with a base area of not more than 2 square metres	Residential Commercial Industrial Rural

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SCHEDULE

PART 3 ABOVE GROUND HOUSING - continued

Column 1 Item no.	Column 2 Facility	Column 3 Areas
2	Roadside cabinet: (a) not more than 2 metres high; and (b) with a base area of not more than 2 square metres	Residential Commercial Industrial Rural
3	Pedestal: (a) not more than 2 metres high; and (b) with a base area of not more than 2 square metres	Residential Commercial Industrial Rural
4	Equipment shelter: (a) not more than 2.5 metres high; and (b) with a base area of not more than 5 square metres; and (c) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority	Residential Commercial Industrial Rural

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SCHEDULE

PART 3 ABOVE GROUND HOUSING - continued

Column 1 Item no.	Column 2 Facility	Column 3 Areas
5	Equipment shelter: (a) used solely to house equipment used to assist in providing a service by means of a facility mentioned in Part 1; and (b) not more than 3 metres high; and (c) with a base area of not more than 7.5 square metres; and (d) either: (i) colour-matched to its background; or (ii) in a colour agreed in writing between the carrier and the relevant local authority	Residential Commercial Industrial Rural
6	In-building subscriber connection equipment	Residential Commercial Industrial Rural
7	Solar panel with a base area of not more than 7.5 square metres	Rural

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**SCHEDULE - continued
 PART 4 – UNDERGROUND CABLE FACILITIES**

Column 1 Item No	Column 2 Facility	Column 3 Areas
1	Underground conduit or cable deployed by: (a) narrow trench not more than: (i) 450 millimetres wide; or (ii) 650 millimetres wide if intended to be used by more than one carrier; or (b) direct burial; or (c) bore or directional drill hole at least 600 millimetres below the surface; where: (d) access to business premises is not restricted between the hours of 8 am and 6 pm, Monday to Friday, or such other hours agreed to by the relevant local government authority; and (e) in relation to residential areas, not more than 100 metres of excavation is left open at any time and vehicle access to each property is not lost for more than 8 hours in total	Residential Commercial Industrial Rural
2	Conduit or cabling to be laid in: (a) an existing trench; or (b) a trench created by a developer, relevant local government authority, public utility or carrier.	Residential Commercial Industrial Rural
3	Cable location marking post or sign	Residential Commercial Industrial Rural

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**SCHEDULE – continued
 PART 5 – PUBLIC PAYPHONES**

Column 1 Item No	Column 2 Facility	Column 3 Areas
1	Public payphones cabinet or booth: (a) used solely for carriage and content services; and (b) not designed for other uses (for example, as a vending machine); and (c) not fitted with devices or facilities for other uses; and (d) not used to display commercial advertising other than advertising related to the supply of standard telephone services	Residential Commercial Industrial Rural
2	Public payphone instrument: (a) used solely for carriage and content services; and (b) not designed for other uses (for example, as a vending machine); and (c) not fitted with devices or facilities for other uses; and (d) not used to display commercial advertising other than advertising related to the supply of standard telephone services or displayed as part of the supply of a content service	Residential Commercial Industrial Rural

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**SCHEDULE – continued
 PART 6 – EMERGENCY FACILITIES**

Column 1 Item No	Column 2 Facility	Column 3 Areas
1	A temporary facility installed: (a) in an emergency; and (b) to provide assistance to an emergency services organisation	Residential Commercial Industrial Rural

PART 7 – CO-LOCATED FACILITIES

Column 1 Item No	Column 2 Facility	Column 3 Areas
1	Facility mentioned in: (a) Part 1, 5 or 6; or (b) item 3 of Part 4; installed on or within; (c) an original facility; or (d) a public utility structure	Industrial Rural
2	Facility mentioned in: (a) Part 1, 5 or 6; or (b) item 3 of Part 4; installed on or within; (c) an original facility; or (d) a public utility structure; where: (e) the total volume of the co-located facilities is no more than 25 per cent greater than the volume of the original facility or the original infrastructure; and (f) the levels of noise that are likely to result from the operation of the co-located facilities are less than or equal to the levels of noise that resulted from the operation of the original facility or the public utility structure	Residential Commercial

**Appendix 2 ACIF Industry Code for
Deployment of Radiocommunications Infrastructure**

See following website addresses:

http://www.aca.gov.au/telcomm/industry_codes/codes/abtem20.htm

- leads to an abstract of the code and the code itself can be downloaded from this page.

http://www.aca.gov.au/telcomm/industry_codes/codes/c564.pdf

- leads directly to a PDF version of the code

The code can also be accessed from the Australian Communications Industry Forum website at:

http://www.acif.org.au/ACIF/files/C564_Oct_2002.pdf

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Appendix 3 Compliance checklist

	Required	Supplied
Making an application		
Has the proponent provided council with its information on infrastructure in this council's jurisdiction?		
Is the proposal low impact or not low impact?		
<ul style="list-style-type: none"> • Has adequate justification been provided for this decision? 		
<ul style="list-style-type: none"> • Has the proponent provided a map of predicted exposure levels at 1.5m above publicly accessible surfaces within 300m and listed as a likely community sensitive location at 5.1© in the ACIF Code? 		
Has the proponent provided cross sectional diagrams?		
Has the proponent provided a photo montage of the facility in context of the location?		
Has the proponent provided a community consultation proposal where required under the ACIF Code?		
Has the proponent provided a heritage report/impact statement in accordance with Council's LEP (if required)?		
Has the proponent provided professional certification that exposure details contained in the application are true and accurate?		
Site analysis		
Has the proponent submitted a scaled site and adjacent locality analysis plan showing: <ul style="list-style-type: none"> • Existing vegetation; • Site boundaries and dimensions • Topography • location of existing buildings; • views to and from the proposed site; • location of sensitive land uses? 		
Public notification/consultation		
Has the proponent consulted with affected adjoining councils (where relevant)?		
Has the proponent consulted with council about how best to conduct community consultation?		
Does the application provide for visible permanent signage on site?		
Has the proponent advised relevant community groups?		

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Has the proponent placed an advertisement in the local paper (if appropriate)?		
Has the proponent conducted a public meeting (if appropriate)?		
Has the proponent provided council with the results of its community consultation process?		
Has the proponent adequately considered the issue of ethnic language?		
Has the proponent erected a sign on site notifying of its intention to construct that provides its contact details for facilities covered by the LIF Determination?		
Design Controls/Council's requirements		
<i>1. Visual amenity</i>		
Has the facility been designed so as to minimise visual impact from the public domain?		
Does the design minimise or reduce the cumulative visual impact from the public domain?		
Does the design take account of <ul style="list-style-type: none"> • colour; • texture; • form; • bulk and scale? 		
Is the infrastructure: <ul style="list-style-type: none"> • well designed; • integrated with existing building structure; • incorporating concealed cables; • integrating the shelters with building structure; • unobtrusive; • consistent with the character of the surrounding area? 		
Does the plan include removal of the infrastructure when it is redundant?		
Does the plan include restoration of the site following construction of the infrastructure?		
<i>1. Co-location</i>		
Does the plan require co-location? If so, <ul style="list-style-type: none"> • Does it result in an unacceptable visual impact? • Does it minimise cumulative emissions for neighbouring residents or other sensitive land uses? 		

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3. Location		
Has the proponent demonstrated that, in selecting a site, it has adopted a precautionary approach in regards to minimising EMR exposures?		
Is the facility in a preferred land use area?		
If the facility is in a sensitive area has it considered ACIF 5.1.4?		
4. Environment and heritage		
Is the infrastructure in a heritage area/on a heritage building/in the vicinity of heritage items requiring development consent?		
Have measures been implemented to reduce visual impact on the heritage item or conservation area?		
Has the proponent provided a heritage report/impact statement?		
Has the proponent considered minimising physical impact on flora & fauna?		
Are any emissions other than electromagnetic expected?		
5. Facility physical design controls		
Has the carrier demonstrated that the infrastructure is of high quality design and construction?		
Does the plan include measures to restrict public access to the antenna(s)?		
Does the facility comply with the Building Code of Australia (not relevant for facilities covered by the LIF Determination) and other relevant Australian standards?		
6. Facility health controls		
Has the proponent demonstrated the measures it has taken to minimise EMR exposures in the adjacent area?		
Has the proponent provided a statement that the proposed facility complies with the relevant Australian exposure standard?		