24 March 2017

The Director, Industry and Infrastructure Policy
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001
Via P&E Online Submissions Tool

Dear Sir / Madam,

Submission on Proposed Changes to the State Environmental Planning Policy (Infrastructure) 2007 – Amendments to Telecommunications Policy

I am writing in reference to the NSW Department of Planning and Environment's current review of the *SEPP (Infrastructure) 2007*.

A number of amendments to the SEPP have been proposed, including in relation to the telecommunications infrastructure deployment. On behalf of Daly International, I am writing to make comment on several of the proposed amendments.

1. Background of Daly International

Daly International are an infrastructure deployment and project delivery organisation. One of the company's specialties is the provision of site acquisition, town planning, engineering and project management services for the telecommunications industry.

Daly International have been a major player in the telecommunications industry for over 20 years, having acquired and deployed over 15,000 cellular base station sites across Australia, the United Kingdom and the United States in that time. We have provided consultancy services for all of Australia's major telecommunications carriers (including Optus, Telstra, Vodafone and NBN Co), and are currently undertaking national projects for several mobile carriers.

Daly International have substantial experience with mobile base station deployment in New South Wales, including significant familiarity with the interpretation and application of the *SEPP (Infrastructure) 2007*. The provisions of the SEPP have a significant bearing on our project work; accordingly we wish to provide our feedback on the proposed changes.

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2. Telecommunications in Australia

Before commenting on proposed changes to the SEPP, we wish to highlight the general state of play of the telecommunications sector in Australia. More than ever, the Australian population relies on high quality mobile telecommunications services for social interaction, entertainment and business.

According to the Australian Communications and Media Authority (ACMA), the number of mobile service (voice and data) subscriptions in Australia exceeds the Australian population, with 32.59 million voice and data service subscriptions current as at June 2016 – and between June 2015 and June 2016, the number of subscriptions increased by 2.6%.[1]

Australia also has one of the highest penetrations of 'smartphone' usage in the world, with reliance on this technology increasing – the abovementioned ACMA study estimates 76% of Australian adults were using smartphones in June 2016, compared with 74% of adults in May 2015 and 67% in May 2014.[2]

These statistics demonstrate the public's increasing expectation for reliable, fast and cost effective mobile network services. However, the impact of this increasing demand is a continual need for mobile carriers to expand their networks through deployment of new infrastructure. It is important that planning policy, at all levels of government, is enacted with consideration for these trends.

Based on our experience with telecommunications legislation, our team believe that telecommunications policy should be unambiguous, and strike an appropriate balance between protecting the community from adverse amenity impact, and allowing reasonable proposals to progress with minimal administrative delay. We believe that the current SEPP strikes an appropriate balance, but make several comments in respect of the proposed SEPP amendments as below.

3. Comment on Proposed Changes

In respect of the amendments tabled in Schedule 19 of the *State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016*, we make the following comments:

- ***[4] Clause 113, Definition of "Mobile Phone Networks Code"***
  Omit "ACIF C564:2004 Deployment of Mobile Phone Network Infrastructure".
  Insert instead "ACIF C564:2011 Mobile Phone Base Station Deployment".

Please note that the term 'ACIF' refers to the '*Australian Communications Industry Forum*'. This body is now more properly known as the '*Communications Alliance*'. It is suggested the amendment omits reference to ACIF.

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1 http://www.acma.gov.au/~/media/Research%20and%20Analysis/Report/pdf/ACMA%20Communications%20report%202015-16%20pdf.pdf

2 http://www.acma.gov.au/~/media/Research%20and%20Analysis/Report/pdf/ACMA%20Communications%20report%202014-15%20pdf.pdf

- ***[7] Clause 116(3)***
  Insert after clause 116 (2):
  (3) The replacement or upgrading of existing telecommunications facilities (including existing radio facilities) by or on behalf of a public authority on land reserved under the National Parks and Wildlife Act 1974*, or acquired under Part 11 of that Act, is exempt development if it complies with Clause 20.*

We acknowledge the intent of this amendment, which allows public authorities (such as emergency services or transport authorities) to upgrade their existing facilities within national parks and reserves under the SEPP. We have no objections to this amendment, but suggest it could be expanded to include certain telecommunications works, performed by a mobile carrier, that would not have an environmental impact.

Many of New South Wales' national parks (and other places reserved under the National Parks and Wildlife Act 1974) have existing, established communications towers, either government owned, emergency services or carrier sites which have been in place for many years. These sites are often in very isolated areas where there is no other development present.

Mobile carriers may sometimes need to deploy infrastructure within national parks, either to provide mobile coverage for visitors to the national park, or to facilitate a radiocommunications transmission link to another site. In such cases, carriers are aware of the environmental and regulatory constraints in these areas, and will seek to install equipment on existing towers rather than construct a new tower.

These works are generally very low intensity and do not generally represent a tangible intensification of the existing tower's visual profile, consisting of new panel antennas or radiocommunications dishes, equipment housing, and ancillary equipment associated with operation of the facility. For the most part these works would normally fall under the Exempt works prescribed in the SEPP, Schedule 3A, Part 1.

Under the SEPP, clause 116(d), Exempt development cannot be carried out on land in an environmentally sensitive area, defined under the SEPP (Exempt and Complying Development) 2008 as including "land reserved under the National Parks and Wildlife Act 1974 or land to which Part 11 of that Act applies". This policy severely curtails upgrades to the telecommunications network – installation of equipment inside a shelter, or a small radiocommunications dish on a 100m guyed mast, would currently require development consent because of this policy despite their negligible impact.

In this SEPP review, the permissibility of public authority upgrades to existing towers is being considered. We believe there is a strong argument for the new clause 116 (3) to be extended to include mobile carriers as well as public authorities, because both parties undertake essentially the same activities; further, much of the work classified as Exempt under Schedule 3A, Part 1, has a negligible environmental impact regardless of which party is undertaking it.

We suggest one of the following options be explored as part of this review:

- That the proposed 116 (3) amendment be expanded to include “mobile carriers” as well as “public authorities”; or

- That a subsequent clause be created for “mobile carriers”, identifying an alternate list of minimal impact activities under Schedule 3A, Part 1, that mobile carriers may undertake on land reserved under the *National Parks and Wildlife Act 1974*. Such a clause would allow minor impact telecommunications work, not requiring any environmental impact, to proceed without needing planning consent – significantly reducing administrative delay for both the state government and the mobile carrier.

We note that the following works would be most appropriate for inclusion under a new clause, per Schedule 3A, Part 1, because of their minimal environmental impact;

- Radiocommunications dishes (Item 1) and directional antennas (Item 2), such as panel antennas, where mounted on existing towers and fully compliant with the applicable development standards;

- Changes to equipment installed within an existing equipment shelter (Item 6);

- Above ground housing (Item 10), providing it is compliant with the applicable development standards, is fully within the curtilage of the existing tower and compound, and does not require removal of vegetation;

- Underground conduit or cabling (Item 11), providing it is fully within the curtilage of the existing compound and does not require removal of vegetation. Such works may be required to where, for example, there is a need to run fibre or power to a new equipment shelter;

- Boring or directional drilling (Item 14), providing it is fully within the curtilage of the existing compound and does not require removal of vegetation; and

- Ancillary equipment for protection and safety or screening (Item 18) providing it is fully within the curtilage of the existing tower and compound.

Note that works involving tangible intensification of visual impact, such as tower extensions, have been excluded from this list. However, all of the above works would have a minor visual impact, and would be fully contained within areas that have already been disturbed and no longer warrant environmental protection.

We further note that the strong development standards within the SEPP provide sufficient limitations to prevent adverse visual impact as a result of these works.

- ***[8] Schedule 3A Exempt and complying development in relation to telecommunications facilities***

  Insert after paragraph (a) wherever occurring in Column 2 of the matter relating to item 5 in the table to Part 2:

  (a1) be located within 100 metres of a dwelling, or

Schedule 3A, Part 2, Item 5, allows for new mobile telecommunications towers to be installed as Complying Development under the SEPP, without requiring Council development approval, subject to certain conditions.

The existing SEPP 3A Part 2, Item 5 arrangements are considered to represent a fair balance between the needs of mobile carriers, Councils and the general community:

- From a carrier's perspective, new towers can be deployed in rural and industrial areas quickly, and with minimal bureaucratic delay. This provision also influences carriers, when selecting sites, to investigate SEPP compliant areas in preference to more sensitive residential or commercial zoned areas

- From a Council perspective, less assessment is required, minimising administrative workload. Councils can also be satisfied that any new Complying development tower has been subject to the strict development standards within the SEPP, which can in many cases be more detailed and prescriptive than the Council's own Telecommunications Code in their LEP.

- Finally, from a community perspective, there are sufficient protections built into the SEPP to limit inappropriate telecommunications development through separation distances and design requirements.

  Complying Development also requires that public consultation be undertaken – in the vast majority of cases, these consultation activities have a much wider scope and scale than those prescribed for a development application under the relevant local DCP or Council policy. Further, the SEPP allows for carriers to deploy infrastructure, thus resolving mobile black spots in the community, more quickly than would otherwise be the case if Council development consent was required.

We acknowledge the purpose of this amendment is to minimise impacts on residents surrounding new mobile facilities. However, we contend that the proposed amendment will have a significant impact on the application and usability of the SEPP, and should not be adopted because these impacts may not have been fully understood. Please note our concerns below.

- *Landowner dwellings are included*

  We note the amendment is designed to protect the amenity of residents close to a new tower. However, a major concern is that it also affects the landowner of the subject property, not only residents on neighbouring lots. When a landowner is agreeable to a new facility on their property, with a full acceptance of any amenity impacts it may have, we submit this is an unfair outcome.

  In some cases, a new mobile tower may be located within 100m of the landowner's residence. However, in signing a lease and agreeing to a facility, the landowner has provided their explicit support for the project, and having signed this lease they are indicating their cognizance and acceptance of any potential amenity impact – accordingly, they do not require protection from amenity impacts under the SEPP.

- *What constitutes a 'dwelling' under the amendment?*

  The definition of a dwelling under the amendment is ambiguous and should be further defined – in its current form, the amendment leaves much room for interpretation. Notwithstanding that the *(SEPP) Infrastructure 2007* does not specifically define 'dwelling', we make the following observations:

  - Is the term dwelling limited to a primary house, or does it also include a secondary detached structure (such as a granny flat or shed) that might be vacant, but has the capability of being lived in?

  - Further to this point, does the term extend to any such structure that might be capable of being lived in, such as a caravan or mobile home parked on a permanent basis? Or a removable structure (such as a donga or site office) that has been connected to utilities?

  - For new sites servicing mining villages, would the onsite accommodation be considered as a dwelling because miners occupy it on a semi-permanent basis?

  - Many rural properties have old farmhouses which, theoretically, have a capability to be lived in but lie vacant and in a state of disrepair – further clarity is needed on whether the liveability and occupancy/vacancy of a structure impact on its classification as a dwelling.

  - Does a 'dwelling' include only existing, established buildings, or does it also include houses under construction? Does this extend to houses where development consent may have been secured? And if this is the case, in some instances houses do not require development consent, but may be located in a subdivision where they could theoretically be developed; would a subdivision approval also have an impact?

  While we note the intent of this amendment is most likely to protect the primary residence on a property, this is not clarified in the amendment.

Also, from an operational perspective, we note that it can be very difficult to ascertain if a structure on a neighbouring property is a dwelling, given some sheds, temporary site offices or mobile homes could be capable of occupation while also appearing dilapidated.

- *Existing SEPP Protections are sufficient*

    - We note that for installation of a new tower, the SEPP already mandates a setback of at least 100m to conflicting land use zones. A greater setback is required for towers larger than 25m. While this setback applies to land use zones and not to specific houses, it is an effective policy – it is rare for a new tower to be installed within 100m of existing houses under the SEPP, given the general locations and circumstances within which SEPP Schedule 3A, Part 2, Item 5 is utilised.

    - In any case, it is a well-established principle in telecommunications deployment that sites have the smallest possible impact on surrounding development, including by maximizing setback to adjoining land uses. A larger setback than 100m will always be sought, unless there are no other feasible options or alternative sites would have a larger cumulative impact on the area.

      However, where investigations indicate a site within 100m of a residence is required, and there are genuinely no other options, it is important that carriers retain their existing powers. It is worth noting that in such cases, carriers will generally propose visual mitigation measures (such as slimmer towers, smaller headframes, antenna screening and colouring of the tower) to reduce the visual prominence of a facility – indeed, some of these measures are recognized as Exempt Work under Schedule 3A, Part 1, Item 18.

    - We note the proposed amendment does not consider mitigating factors such as existing vegetation, terrain or built form. New towers under the SEPP are only permissible in industrial areas, where existing built form will often offset the visual impact of the tower, and in rural areas where existing vegetation and terrain features will generally be present and provide effective screening.

Overall, we do not believe this amendment, in its current form, is suitable for adoption in a SEPP update. However, should this amendment proceed, we suggest that the following be adopted:

- The definition of ‘dwelling’ is made clear, to remove uncertainty over what constitutes a dwelling – specifically, for the purposes of this SEPP, we suggest it be limited to the primary, permanent residence on the premises. The definition should omit secondary residences (such as granny flats), serviced outbuildings (such as sheds or dongas) and buildings which are reasonably believed to be abandoned, or no longer able to be occupied.

- That, if the 100m setback be adopted, that it be limited to dwellings on adjoining lots, and a specific exclusion be provided for the owner of the subject lot. There is a precedent for such an exemption in the *SEPP (Infrastructure) 2007*, Part 3, Division 4 – Electricity Generating Works or Solar Energy Systems, Clause 37. This clause provides advice on Complying development for small wind turbine systems. A setback requirement is established based on the noise generated by the installation; per Clause 37(1)(c), the setback is "*from any dwelling that is not owned or occupied by the owner of the system*". A similar exemption should be provided for the landowner of the lot on which the telecommunications tower is proposed.

4. Suggested Additional Amendments to *SEPP (Infrastructure) 2007*

Further to the changes currently proposed, we also suggest the following issues be considered as part of this review.

- ***Amend Schedule 3A, Part 1 Exempt Development, Item 18, to include minor ancillary operational equipment.***

Item 18 provides that the following items are considered Exempt Development:

"*Ancillary facilities for a telecommunications facility for any of the following purposes:*

(a) To ensure the protection or safety of the telecommunications facility, members of the public in close proximity to that facility or persons required to access and maintain that facility,

(b) To screen or shroud antennas or telecommunications equipment (or both) to minimise their visibility and improve visual outcomes"

Item 18 is currently limited to ancillary equipment associated with safety or visual screening. We note, however, that certain other ancillary equipment is not included within the definition of Exempt Development and instead falls under Schedule 3A, Part 2, Item 6 as Complying development.

A telecommunications facility includes a significant amount of ancillary equipment associated with its normal operation. In addition to safety equipment and visual mitigation, this ancillary equipment includes operational infrastructure behind the antennas (such as mast head amplifiers and remote radio units), as well as antenna mountings, cable trays, cabling and other similar equipment. Where works on an existing structure are proposed, minor strengthening activities may also be needed.

This infrastructure is generally either hidden behind other parts of the tower (such as the antennas) or forms an integral part of the larger tower and is not noticeable at ground level. In all cases, these works are considered minor enough not to warrant their own specific classification under the SEPP.

Where not being progressed under the SEPP, these works are normally considered 'Low Impact' under the *Telecommunications (Low Impact Facilities) Determination 1997*, part 3.1(4), where the definition of ancillary equipment includes both operational and safety equipment because of its minimal visibility.

Under the current wording of the SEPP, operational equipment cannot be progressed as Exempt work under the SEPP and instead falls under the classification of Complying development per Schedule 3A, Part 2, Item 6.

Given operational equipment does not have a significant visual impact, we propose that the wording of Schedule 3A, Part 1, Item 18, be amended to include the following as Exempt:

(c) *Minor ancillary equipment associated with normal operation of the telecommunications facility (excluding stand-by power generators).*

- ***Statewide Consistency on Council Interpretation of the SEPP***

We have observed some tension between certain Councils and mobile carriers over interpretation and application of the SEPP (Infrastructure) 2007. Specifically, several Councils have argued the permissibility of CDCs for new towers, because the telecommunications facility is not a listed use under the Land Use Table for that zone.

By way of background, Telecommunications Facilities remain in the Dictionary of the 'NSW Standard Instrument – Principal Local Environmental Plan' (and in Council LEPs using the Standard Instrument), but are no longer listed as a permissible use in any of the zones. It appears this has occurred because governance of telecommunications proposals now falls to the SEPP (Infrastructure) 2007 and is not within the purview of Council LEPs.

Several Councils have argued that, even though a site is located in the RU1 Primary Production zoning and otherwise complies with the SEPP, development consent is needed because Telecommunications Facilities are not a listed use under the Land Use Table, and are therefore considered a 'Prohibited Use'. However, this is by no means a uniform interpretation and appears to be only in Councils that have, traditionally, been politically opposed to mobile deployment.

In order to achieve state-wide consistency, we note a unified approach from all Councils is needed. It is requested that the Department of Planning and Environment clarify SEPP permissibility for all Councils at a state level.

We thank you for providing us with the chance to make comment on the proposed amendments to the SEPP. Please contact us should you require any clarification on the issues discussed above.

Yours sincerely,

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