



07 April 2017

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

Dear Sir / Madam,

Re: Proposed SEPP Amendment – Division 21 Telecommunications and Other Communication Facilities

I write on behalf of Huawei Technologies (Australia) Pty Ltd with regards to the proposed amendments to the State Environmental Planning Policy (Infrastructure) 2007. More specifically, Huawei would like to comment on the proposed changes currently in advertisement:

Division of SEPP	Proposed Changes
Division 21 Telecommunications and other communication facilities	<ul style="list-style-type: none">Further qualify the complying development provisions in Schedule 3A Item 5 such that the location of a new tower is to be located more than 100 metres of a dwelling. The amendment is to ensure that a proposed tower, if located on the same lot as a dwelling or if located in specific zones, is at least 100 metres from a dwelling.

1) Background

Huawei is a telecommunications vendor that provides end-to-end services for the delivery of telecommunications infrastructure for mobile Carriers in Australia. Huawei is also providing acquisition and build services for Carriers deploying sites under the Federal Governments Mobile Blackspot Program, in NSW and the remaining states.

Mobile telecommunications play a central role in society. Individuals, families, businesses and society are all benefiting from the improved connectivity facilitated by mobile technologies. Mobile technology's continual development has allowed it to become the preferred channel to access the internet for most people in Australia and the rest of the world. In addition to its social and economic benefits, mobile connectivity plays a key role in emergency situations. According to the Australia Mobile Telecommunications Authority (AMTA, 2017) approximately 70% of all calls to emergency services are now made from mobile phones.

The SEPP (Infrastructure) 2007 plays a key role in telecommunications deployment in NSW. The current Complying Development provisions of the SEPP facilitates the timely deployment of telecommunications

infrastructure in NSW. This allows Carriers to cater for the increasing demand for mobile services by delivering an improved and reliable telecommunications network to the Australian public.

2) Need for a 100m Exclusion Zone from an Existing Dwelling

Carriers can currently deploy new mobile facilities in rural and industrial area under Schedule 3A, Part 2, Item 5 of the SEPP without the need for development consent from Council. These areas are promoted as suitable locations for new telecommunications infrastructure. The timely deployment of Complying Development facilities in rural areas plays a key role in resolving coverage deficiencies in mobile blackspots.

There are currently sufficient provisions in Part 2, Item 5 to address the proximity of proposed facilities to areas zoned for residential purposes. In addition to these controls, Principle 1 of the *'NSW Telecommunications Facilities Guideline including Broadband 2010'* provides a framework for Carriers to design and site telecommunications infrastructure in order to minimise visual impact in NSW.

According to the AMTA (2013), exclusion zones have the potential to create reception black holes and/or network congestion, which can deny Australians access to the safety, business and personal benefits of mobile communications. The AMTA (2013) also notes that applying exclusion zones for base stations can restrict community development.

Determining a 100m exclusion zone for a neighbouring dwelling will also be problematic in that it is not possible to survey adjacent land without approval from the landowner. In addition to the above landowner constraints, accurately surveying the surrounding area in a 100m radius will also be problematic and in some cases not possible.

The current Complying Development provisions are considered to be adequate in ensuring telecommunications facilities are appropriately sited, and impacts on residential zoning is given appropriate consideration. The implementation of an exclusion zone will see Complying Development opportunities restricted.

3) Definition of Dwelling

Currently, the SEPP (Infrastructure) 2007 and *Environmental Planning and Assessment Act 1979* does not provide a definition for *'dwelling'*. Instead it is necessary to turn to the Standard Instrument – Principle Local Environmental Plan (LEP) for a definition:

"a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile."

The application of the above is dependent on the definition of *'domicile'* which is not clearly defined in the NSW planning framework. I refer to the case of *Wollondilly Shire Council v 820 Cawdor Road Pty Ltd* [2012] NSWLEC 71. In regards to the definition of domicile, Lloyd AJ of the Land and Environment Court discerned that *'a person might have as his or her domicile a caravan, or even a tent, as long as it has a sufficient degree of permanency of habitation or occupancy'*. The ambiguity that arises from the above precedent could see Complying Development for the purposes of a new telecommunications facility

adversely impacted, unless a clear definition or distinction of a 'dwelling' is established.

4) Land Owner Preference and Flexibility

The proposed amendments to the Complying Development provisions will limit the ability of willing landowner's to choose a suitable location on their property. Complying Development proposals require consent from the landowner(s) who currently have the ability to choose a location on their land. They are provided with flexibility in choosing a location which will not impact on the current and future uses of their property, despite being in proximity to a landowners dwelling.

The proposed amendments to Complying Development will impact the choice landowner's have in selecting a suitable location within their property. This will in turn limit the overall potential locations within a property for Complying Development facilities.

5) Existing Carrier Consultation

In Australia, mobile Carriers are bound by Industry Code C564:2011 Mobile Phone Base Station Deployment (Deployment Code). Section 4.1 and 4.2 of the Code, provides a framework for the design and siting of base stations. The Code also provides Carriers with a robust consultation framework. Under the Code, consideration must be given to submissions made by Council and interested and affected parties during the consultation program. Carriers are required to consider these submission and where possible address concerns raised. This can often involve amendments being made to the current design and location to achieve a balanced outcome. In addition to the current provisions of the SEPP(Infrastructure)2007, the Deployment Code provides a sufficient framework for Carriers to site and design facilities with input from Council and the community.

Thank you for providing us with the opportunity to make a submission on the proposed SEPP amendments. If you require any clarification on the above, please contact the undersigned.

Regards,



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