Rachel Blackwood
A/g Assistant Secretary, Spectrum and Telecommunications Deployment Branch
Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 594
Canberra ACT 2601

Submission Response – Amendments to the telecommunications carrier powers and immunities framework – Tranche One

This submission can be published on the World Wide Web

Yes

Date of submission 1 April 2021

Logo of organisation – if an organisation making this submission

CITY OF MELBOURNE

Name and contact details of person/organisation making submission

City of Melbourne ('CoM')

[redacted]

Contents

1. General Comments

1.1 City of Melbourne ('**CoM**') welcomes the opportunity to make comments on the Department of Infrastructure, Transport, Regional Development and Communications Consultation's Consultation Outcomes Paper on *Improving the Telecommunication Powers and Immunities Framework* ('**Consultation Outcomes Paper**'), which was released on in March 2021.

1.2 CoM is the local government body responsible for the municipality of Melbourne. CoM understands the importance of state-of-the-art infrastructure to support citizens and business. The rapid and priority introduction of 5G is critical to the future of the city and as such, CoM supports the implementation of a functional 5G framework.

1.3 Over the last few years, CoM has made significant efforts to work with relevant stakeholders to understand and facilitate a smoother 5G rollout across the municipality. CoM's core principle guiding this work has been, and will be, to ensure 'connectivity without the clutter, minimising disruption'. The activity has included a 5G and IoT 'Testbed' and the establishment of a 5G Enablement role. While these efforts have highlighted several issues with the deployment of 5G infrastructure, the workshops run by CoM engaging community members, industry players, carriers and other stakeholders have shown the promise of the outstanding opportunities to leverage 5G and other next generation smart technologies for CoM, provided a few challenges can be overcome. The continuation of this work will ensure that the needs of the community, the city and service providers will become clearer, and the solutions to these challenges will become more cogent. CoM looks forward to contributing to these solutions and welcomes the opportunity to provide some key input in this submission.

1.4 In 2018 CoM made a submission to the House of Representatives Standing Committee on Communications and the Arts' 5G Inquiry. This submission summarises the key issues raised therein and reiterates recommendations which have perhaps been overlooked by the Standing Committee since. It is noted, however, that the Standing Committee made a number of comprehensive recommendations in their report of 30 March 2020 entitled The Next Gen Future: *Inquiry into the deployment, adoption and application of 5G in Australia* ('**Report**').

1.5 The Report makes the following recommendations:

Recommendation 3

2.169 The Committee recommends that the Australian Government commence a review of the low impact facilities framework to ensure that its powers to encourage co-location of facilities and equipment are fit-for-purpose in a 5G environment. As part of this process, the Australian Government should begin reviewing carrier arrangements for 5G infrastructure sharing.

Recommendation 4

2.170 The Committee recommends that the Department of Communications and the Arts assess the suitability of current powers and immunities arrangements, especially in relation to the timeframes for raising objections, noting the likelihood of an increased number of installations for the deployment of 5G.

1.6 The Consultation Outcomes Paper references the suggestions to amend the various legislative instruments which allow carriers to deploy telecommunications equipment and infrastructure with a designation of '*low impact*'. These key legislative instruments are summarised below:

- The *Telecommunications Act 1997* (Cth) ('**the Act'**);
- The *Telecommunications Code of Practice 2018* (Cth) ('**Code of Practice'**);
- The *Telecommunications (Low-impact Facilities) Determination 2018* (the **'LIFD'**);p

(Collectively the '**Telco Legislation**')

The Consultation Outcomes Paper stresses the importance of balancing the interests of landowners and carriers in updating the legislative instruments.

2. Implications of 'Low-impact Facilities' in the 5G Context for Major Commercial Districts

2.1 The LIFD made under subclause 6(3) of Schedule 3 to the Act describes in some detail low-impact deployments (which form the basis of the carriers' obligations for deploying mobile base stations and antennas). It is not disputed that, through the introduction of 5G, mobile cell sizes will shrink, resulting in the need for more cell sites. This will be particularly evident in the most densely populated areas like major central business

districts ('**CBD**'). Three (or more) carriers deploying significantly more cells will add clutter and reduce amenity in the city.

2.2 The original LIFD did not foresee this significant density of cells posed by the introduction of 5G, and as such, the **cumulative effect** of many more, smaller cells **must** be now considered. Indeed, the ever-increasing consumer usage of telecommunications services and expectations of higher bandwidth present carriers with a financial incentive to deploy as many small cells as possible, and a 5G evolution (which leverages a higher spectrum in the millimetre frequency bands) may result in cells being deployed as close as 100 metres apart. Such a high concentration of cells within CBD areas will have a significant impact on the amenity of the city users and as well as cell performance.

2.3 As carriers add cells over time in a concentrated area, there will likely be 'frequency overlap' as cell density increases. Although a Carrier will aim to place cells so overlap is minimised, the business needs driving cell installation will inevitably overrule optimal placement in certain areas. At a certain point the frequency overlap might become so great that an additionally installed cell will render one or two or three sensors in close proximity, superfluous.

2.4 Given this cumulative effect, carriers should be required to employ a continual additive and reductive approach to their spatial positioning of cells. This presents an opportunity for the Carrier to revisit the spatial distribution in this 'frequency precinct' and to de-densify the cells by removing or redeploying the newly superfluous ones elsewhere. The proposed Tranche 1 changes outlined in the Consultation Outcomes Paper do not address this. CoM will provide further submissions on this matter in Tranche 2, which provides for consideration of smart poles and removal of redundant equipment.

2.5 CoM maintains that it and other major city centres, however, must be distinguished from the concept of a conventional landowner as referred to in the Telco Legislation, as it also dons significant responsibilities on behalf of the City, including, but not limited to, safety (footpath amenity), functionality, liveability (access to open space), promotions, heritage protection, and design (visual amenity).

3. Achieving Balance

3.1 CoM understands the difficulties presented to carriers by the roll-out of a 5G network (both nationally and also on a localised basis), there can be no doubt that regulatory change is crucial for the efficiency in deployment and future operation of such a network. Moreover, regulatory change is essential to ensure that the right balance is struck between this driver of telecommunications innovation and amenity and quality of services. Indeed, this important *balance* is recognised by the Paper – as it was in the explanatory notes to the Act drafted more than two decades ago. Accordingly, CoM must play a stronger more proactive role in driving the broader community concerns and base objectives. As such, CoM must recognise that the broader community sentiment at this time is that carriers are already afforded very broad powers, often described as 'draconian'.

4. Current Position

4.1 As it currently stands, local government is largely unable to influence the deployment of mobile networks unless there are heritage implications or other special circumstances (e.g. crown land). This must change if CoM is to ensure the quality of experience in the city that will drive growth and success. It is vital that Melbourne retains amenity and liveability in order to continue to attract business and residents who in turn will provide the carriers with high value customers.

5. National Consistency

5.1 It is noted that metropolitan cities, largely the capital cities of Australian States and Territories and some others, may require different supports and procedures to other targeted areas. Indeed, it cannot be considered that a 'one size fits all' approach would be efficient in light of the considerable difference in the density of sites needed in major Australian cities compared to rural areas for example. CoM does not consider that a 'nationally consistent' approach put forward by CoM for 5G specific deployment (see part 10.3 of these submissions) is necessary or desirable in the circumstances.

5.2 CoM notes that the Framework already works on different levels:

- Facilities are classified as *low-impact* (depending on the specifics of the facility, and also the location of the site, being rural, residential, industrial or commercial);[1]
- Exclusionary areas already exist in areas of environmental significance;[2]
- The Industry Code already promotes distinct approaches for small cells (introduced only in 2018)[3] and other low-impact telecommunications equipment, highlighting the difference in consultation etc. required.

Hence the suggested approach need not be seen as revolutionary.

6. Primary Concerns with Issues Identified in the Consultation Outcomes Paper

6.1 The Consultation Outcomes Paper has identified that proposed changes in Tranche 1 will be dealt with by;

- Amendments to The *Telecommunications Code of Practice 2018* (Cth) ('**Code of Practice'**);
- Amendments to The *Telecommunications (Low-impact Facilities) Determination 2018* (the **'LIFD'**); and also
- Policy implementation

Accordingly, City of Melbourne has addressed below their concerns and recommendations regarding each of these areas.

7. Amendments to Code of Practice

7.1 CoM supports the restructuring of primary conditions into Chapter 1A as useful in terms of reducing confusion of landowners and carriers regarding their responsibilities.

The primary issues CoM has identified with the new Chapter 1A relate to:

- New engineering certificate requirement
- Industry standards and codes

[1] *Telecommunications (Low-impact Facilities) Determination 2018* (the 'LIFD').
[2] *Telecommunications Act 1997* (Cth) Schedule 3, clause 2.5.
[3] *Mobile Phone Base Station Deployment Industry Code (C564:2018)*

- Best practice section
- Outstanding safety concerns that should be addressed through additional new provisions

7.2 Engineering certificate – Installations 1A.7

CoM principally agrees with the introduction of an Engineering certificate requirement, in Chapter 1A.7, but queries the current drafting and practical application of this section, as outlined below.

7.2.1 The carrier only has a duty to provide the certificate 30 days after the facility is installed, meaning there is no obligation to provide any assurance that the facility will be sound prior to this, nor any information about its dimensions, location etc. To establish carriers' requirement and intention to meet this requirement from their initial contact with the landowner, CoM recommends including in the standard LAAN notice template proposed by the Consultation Outcomes Paper (discussed below) a checkbox the carrier can tick to certify that it the facility will be designed to meet the standards of Chapter 1A.7 and will be certified by a suitably qualified engineer.

7.2.2 CoM queries what a 'suitably qualified engineer' is with regards to this provision and whether this will be an experienced engineer working in the telecommunications sector or otherwise. Further definition or restriction of this title could be implemented within Chapter 1A.7 or alternatively as part of an ACMA-registered industry standard.

7.2.3 Chapter 1A.7(4)(d) references 'standards and codes' which appears to 1A.6 above. As discussed below, Chapter 1A.6 seem to at this stage only refer to the codes and standards registered by ACMA, which do not currently relate primarily to safety or structural engineering.

7.2.4 Please see Part 8 of this submission above for analysis of how the engineering certificate requirement interacts with the LIFD definition of certified facility.

7.3 Industry Standards and Best Practice

7.3.1 Schedule 3 to the Act outlines a requirement for carriers to comply with industry standards (namely sections 12 and 15 of the Act):

> **12 Compliance with industry standards**
>
> If a carrier engages in an activity covered by Division 2, 3 or 4, the carrier must do so in accordance with any standard that:
>
> (a) relates to the activity; and
>
> (b) is recognised by the ACMA as a standard for use in that industry; and
>
> (c) is likely to reduce a risk to the safety of the public if the carrier complies with the standard.
>
> **15 Conditions specified in a Ministerial Code of Practice**
>
> (5) This clause does not, by implication, limit the matters that may be dealt with by codes or standards referred to in Part 6.

7.3.2 The issue is that, from a statutory interpretation perspective, the drafting of these provisions requires that **all** of the conditions in section 12 (paragraphs (a), (b) and (c)) apply. In the context of carriers engaging in those activities, standards recognised by / registered with ACMA are very limited.[4]

7.3.3 While the Code, as amended, attempts to replicate conceptually these industry standards in Chapter 1A.5 and also provides for the concept of best practice in Chapter 1A.4, there is an overall lack of clarity and specificity. In the Code 'industry standard' means a standard generally recognised by the Australian telecommunications industry as a standard for use in *the industry*. 1A.5 therefore requires carriers only to follow standards registered by ACMA. These standards are directly related to the telecommunications industry and primarily do not have a safety focus. The only code providing relevant design and installation standards is the *Mobile Phone Base Station Deployment C564:2020* 'Industry Code' (as referenced in previous paper), which applies

[4] ACMA, *Register of telco industry codes and standards*, retrieved from: https://www.acma.gov.au/register-telco-industry-codes-and-standards.

only to "carriers who are: installing; intending to install; operating; or contracting or arranging for the installation of fixed radiocommunications infrastructure…which is used, intended to be used, or capable of being used to supply Public Mobile Telecommunications Services. This Code does not apply to Radiocommunications Infrastructure that is not Mobile Phone Radiocommunications Infrastructure."

With the Industry Code being the only code on the ACMA website which addresses any aspect of site deployment, this code will need to be addressed and specifically amended to include all carriers.

It is interesting to note that although the term industry standards is defined in the dictionary it is not used elsewhere in Chapter 1A, although it would likely be helpful to include this term in section 1A.7 with regards to engineering certificate standards.

7.3.4 1A.5(b) refers to a standard that is "recognised by the ACMA as a standard for use in **that** industry," which seems to imply any other relevant industry that the prescribed activity may entail, for example, electrical, railway, roads etc. Codes recognised by ACMA, however, relate only to the telecommunications industry specifically. In any case, CoM suggests that it would be beneficial to impose a duty upon carriers to also comply with the standards of other relevant industries to their activity and this could be incorporated into 1A.5 or as a separate section in 1A.6 (see below).

7.3.5 1A.5(c) Seems to suggest that if the carrier does not deem a relevant standard to be likely to reduce a risk to the community, they would not be required to follow this standard. This weakens the overall effect of 1A.5 to protect public health and safety.

7.3.6 CoM suggests that a process for proper codification of safety and design standards by ACMA be introduced. Landowner groups and local governments should be encouraged to provide relevant input into this process to work closely and cooperate with the telco industry to codify safety, design and engineering

practices that are registered with ACMA and therefore mandatory as "industry standards" under Schedule 12.

7.3.7 The current proposed Section 1A.6 has the same impact as section 1A.5. It only requires carriers to follow standards registered by ACMA, as established above. It is unclear what this section purports to achieve that is not already addressed by the proper purpose of 1A.5.

Given that 1A.6 does not add any additional requirements not established by 1A.5, it would be better to revise this section to instead introduce a requirement for carriers to meet industry standards from any other relevant industry that should apply to their installation and maintenance of a facility depending on its location, for example, roads, water, rail or electricity. Codes and standards are listed in CoM's 'Consent for Works' standard conditions. The CoM Consent has defined conditions, legislation, codes and standards that the applicants must comply with and that relate to safety, TMP and standards for the installation of infrastructure within the road reserve.

7.4 Additionally, the Code's provisions concerning 'best practice,' now set out in Chapter 1A.4, are inadequate:[5]

Best practice

(1) In engaging in a land entry activity, a carrier must ensure that the design, planning and installation of facilities (the carrier's facilities) is in accordance with best practice.

(2) For subsection (1), best practice is conduct of the carrier complying with:

(a) an industry code, registered by the ACMA under Part 6 of the Act, applying to the activity; or

(b) a standard, made by the ACMA under Part 6 of the Act, applying to the activity.

(3) However, if there is no code or standard in force for the activity, best practice is conduct regarded by people constructing facilities substantially similar to the carrier's facilities as using the best available design, planning and location practices to minimise the potential degradation of the environment and the visual amenity associated with the facilities.

[5] *Telecommunications Code of Practice 2018* (Cth)

7.4.1 Ultimately, paragraph (3) provides for a concept of 'best practice' which is self-determinative for the telecommunications industry, meaning that what can be considered best practice is essentially regulated by carriers (who are likely the only *people constructing facilities substantially similar to the carrier's facilities*) and as such, does not address the issues outlined above.

7.4.2 Adding codes regarding safety and design standards to ACMA's register will help in this regard, but in the minimum, the word "safety" must be added after the words "using the best available design, planning…" under Chapter 1A.4(3) so it is incorporated into the definition of best practice.

7.5 CoM suggests that a new section be added following Chapter 1A.10 to impose additional responsibilities on carriers to maintain, service and repair any facility or parts of facility they have installed on the land. There is currently no requirement for carriers to maintain or fix defective assets or even respond to notification by a landowner that their facility is defective or unsafe in some way.

7.5.1 To ensure public safety, carriers should be required to:

- Maintain facilities to industry standards of safety, design and engineering for the duration of their existence.
- Take all reasonable and immediate steps to rectify as soon as practicable a fault or safety concern when made known by the landowner, occupier or authority.

7.6 Finally, the 'Industry Code' identified in previous paper has not been specifically discussed at all in the Consultation Outcomes Paper. No changes have been proposed that would impose additional safety standards or requirements. Regardless, the industry code applies only to mobile carriers and is therefore insufficient to provide for standards regarding the installation of all types of low-impact facilities. To be effective, the code needs to be expanded to cover all carriers, including internet-only providers.

8. Amendments the LIFD

8.1 The primary issues CoM has identified with the proposed amendments to the LIFD relate to the new 'certifiable facility' definition (Section 3.2). The changes to low-impact radiocommunications facilities and co-location of facilities present no concerns for CoM.

8.2 CoM primarily agrees with the implementation of a new certifiable facility definition, but raises a few specific queries regarding instances where the definition may not be broad enough.

8.3 Of the low-impact facilities to be classified as certifiable facilities, distinct treatments apply to radiocommunications facility cabinets and solar panels, which are not classified as a certifiable facility if they are positioned on the ground or are attached to a structure which is owned by the carrier.

8.4 As they are not classified as certifiable facilities, there is no requirement for an engineering certificate to be completed for a cabinet or solar panel attached to a structure owned by the carrier. The structures they may be attached to however, (Pillars, Pedestals and Equipment Shelters) are not classed as certifiable facilities either. This means, for example a solar panel with a base of 12.5m^2 can be attached to a structure owned by the carrier and none of this will need to be certified by an engineer.

8.5 As all towers, satellite dishes, antennas, radiocommunications dishes and tower extensions are certifiable facilities, the main areas of concern for CoM regarding facilities' safety and structural integrity are covered.

9. Issues to be addressed via Policy Implementation

9.1 CoM supports the development of both a template LAAN notice and Fact sheet to clarify the objections process for landowners but has suggestions regarding both of these documents.

9.2 LAAN Notice Template

9.2.1 CoM suggests that the practical application of the use of this template must be considered. The TIO already has guidelines in place on how to complete a LAAN notice correctly, yet landowners have provided many examples of

instances where carriers have failed to properly follow the Act and Code with regards to notices as it currently stands, or failed to properly attach plans and information.

9.2.2 The LAAN template should inform landowners whether the facility to be installed is a certifiable facility, and if so, to expect an engineering certificate within 30 days of its installation.

9.2.3 CoM suggests that the LAAN notice template should be incorporated as a standard on ACMA's website to make compliance required by carriers. CoM's practical concern, as discussed below in Part 10.5 of this submission, is that the penalties for carriers breaching the code are few. It is, however, noted that Tranche 2 will be addressing the extension of a minimum notice period. The LAAN template and Factsheet will obviously need to be altered once Tranche 2 issues have been resolved.

9.2.4 CoM has also identified that Subsection 17(6) of the Act poses a problem with regards to the issue of LAAN notices – please see Part 11.1 of this submission for further detail.

9.3 Fact Sheet

9.3.1 CoM supports the creation of a fact sheet to further clarify the objections process for landowners in an easily readable format and look forward to seeing the finished product.

9.3.2 CoM suggests that the fact sheet should include a section at the end letting landowners know what to expect going forward with installation. This should include reference to the engineering certificate that the carrier is required to provide for certifiable facilities so that the landowner knows to expect this certification in a timely manner.

10. Issues raised in CoM's October 2020 Submission Unaddressed by the Consultation Outcomes Paper

10.1 Public Authority

10.1.1 CoM would recommend that references to "public utilities and road authorities" should be expanded to include all local government authorities (not just the council as a road authority) as public landowners and managers.

10.1.2 CoM recommends that further data be provided to sophisticated landowners such as public authorities in addition to the standard notice information required. Carriers should provide quality-assessed, geo-referenced datasets to sophisticated landowners in a standard format that would allow the data (both spatial and attribute) to be transferred via an API with no or minimal post-processing effort required. The regulations should provide for ongoing notifications to landowners as situations change via easy-to-use applications (such as mobile phone apps).

10.2 Carrier Powers and Lopping of Trees

10.2.1 CoM acknowledges that the efficacy of the 5G millimetre wave radio spectrum is adversely affected by trees and other physical assets and this adds a critical reason to collaboratively decide on cell heights and locations. However, CoM is not willing to sacrifice trees in favour of network performance. This includes both unnecessary **lopping** and **pruning** of trees. Trees are considered critical infrastructure that provide many benefits to the community. Melbourne City's urban forest is considered a valuable asset and is protected by our Tree Restriction and Removal Policy. The Urban Forest Strategy has a goal to increase tree canopy cover to 40% by 2040 across the municipality. There must be a sustainable way to advance the use of technology and to achieve this, CoM must be an active part of the decision-making process within the Melbourne municipality.

10.2.2 To ensure public safety, carriers should be required to:

- Notify the CoM of works that are proposed to occur within the Tree Protection Zone of Council trees.

- Work in a tree sympathetic way to minimise and reduce the impacts to tree roots while adhering to AS 4970-2007 Protection of trees on development sites.

10.3 Whole of precinct approach

10.3.1 In (part 7 of) CoM's October 2020 submissions, CoM recommended that carriers should undertake a whole of precinct approach to their site selection process as regards the 5G rollout. This can be addressed by changes to the LIFD and the Code as well as the Industry Code.

10.4 General Planning Perspectives

10.4.1 From a planning perspective, (being a significant function of Council), the main issue is defining thresholds which trigger the need for a planning permit. This is largely unaddressed in Tranche 1 but is due to be addressed in Tranche 2 with Amendments to the Act, Code and LIFD. CoM disputes the proposal of Parts of Section 3 of the Original Paper 'Facilitating Services…' to remove planning permit requirements from most infrastructure elements including independent poles (and attempt to have these redefined as 'low-impact'), which does not guarantee co-location or the sharing of existing infrastructure. There are certain geographic areas long recognised and defined in the planning scheme which are considered more sensitive and require robust assessment of safety and amenity impacts, such as:

10.4.2 Areas of recognised heritage significance as covered by Heritage Overlays (HO) in the planning scheme. Emphasis will be on ***visual impacts***. Public parks and open space (normally also managed by Council) and defined in the planning scheme as Public Park and Recreation Zone (PPRZ). Emphasis will be on ***visual and functional matters***.

10.4.3 Public realm in intensely developed areas with high pedestrian traffic, particularly the city centre Capital City Zones (CCZ) and the Docklands Zone (DZ). Emphasis will be on ***safety and functionality***, as well as ***visual intrusion***.

10.4.4 Areas where future strategic development is proposed such as Comprehensive Development Zones (CDZ) and Public Acquisition Overlays (PAO, currently rare). Emphasis will be on ***ensuring future strategic development*** is not compromised.

10.4.5 CoM recommends that any siting in these areas triggers the need for a planning permit to ensure a minimum level of protection of public amenity and safety, as well as avoiding impacts on formally proposed strategic development. Importantly, there also needs to be oversight of cumulative impacts in these sensitive areas, which can easily arise from multiple, uncontrolled individual actions. It is CoM's belief that this need not be onerous on a particular carrier, because:

- CoM believes that practically, 5G is expected to roll-out on an area or precinct basis, so many sites would (in the most sensible and practical approach) be assessed at once and in a coordinated manner; and
- A stream-lined assessment process could be implemented, such as for existing VicSmart applications.

10.5 Penalties for Carriers' Non-Compliance

10.5.1 Although the consultation Outcomes Paper has provided solutions to several of the issues raised by stakeholders at consultation, CoM query the practical enforcement of these changes upon carriers. The remedial actions ACMA can take that are provided for under the Act are unlikely to be sufficient to ensure the compliance of carriers at all times.

69 Remedial directions—breach of condition

(1) This section applies if a carrier has contravened, or is contravening, a condition of the carrier licence held by the carrier.

(2) The ACMA may give the carrier a written direction requiring the carrier to take specified action directed towards ensuring that the carrier does not contravene the condition, or is unlikely to contravene the condition, in the future.

(3) The following are examples of the kinds of direction that may be given to a carrier under subsection (2):

(a) a direction that the carrier implement effective administrative systems for monitoring compliance with a condition of the licence;

(b) a direction that the carrier implement a system designed to give the carrier's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a condition of the licence, in so far as those requirements affect the employees, agents or contractors concerned.

(4) A carrier must not contravene a direction under subsection (2).

(8) A direction under subsection (2) is not a legislative instrument.

69AA Remedial directions—breach of conditions relating to access

Scope

(1) This section applies if:

(a) a carrier has contravened, or is contravening, a condition of the carrier licence held by the carrier; and

(b) the condition is set out in Part 3, 4 or 5 of Schedule 1.

Note: Parts 3, 4 and 5 of Schedule 1 deal with access to network information and access to facilities.

Direction

(2) The ACCC may give the carrier a written direction requiring the carrier to take specified action directed towards ensuring that the carrier does not contravene the condition, or is unlikely to contravene the condition, in the future.

(3) The following are examples of the kinds of direction that may be given to a carrier under subsection (2):

(a) a direction that the carrier implement effective administrative systems for monitoring compliance with the condition;

(b) a direction that the carrier implement a system designed to give the carrier's employees, agents and contractors a reasonable knowledge and understanding of the requirements of the condition, in so far as those requirements affect the employees, agents or contractors concerned.

70 Formal warnings—breach of condition

(1) The ACMA may issue a formal warning if a carrier contravenes a condition of the carrier licence held by the carrier.

11. CoM's Response to Tranche 2 Issues

11.1 Extension of notification timeframe from 10 business days to 20 business days – some considerations:

11.1.1 Whilst stakeholders are not being asked at this time, CoM is supportive of an extension of the minimum notification period.

However, CoM has ongoing concerns regarding the potential for abuse of subsection 17(6) of Schedule 3 to the Act.

11.1.2 Subsection 17(6) of Schedule 3 to the Act has been identified as a loophole for carriers and consideration must be given to the alteration of this provision, particularly given the extension of timeframes likely to occur. S17(6) allows carriers to engage in installation, inspection or maintenance activities without providing written notice to the landowner and occupier if:

(b) those activities need to be carried out without delay in order to protect:

(i) the integrity of a telecommunications network or a facility; or

(ii) the health or safety of persons; or

(iii) the environment; or

(iv) property; or

(v) the maintenance of an adequate level of service.

Subsections 17(6)(b)(i) and (v) are problematic here because they afford carriers broad "emergency" powers relating to the integrity of a network or

maintenance of an adequate level of service. These conditions are broadly defined and can easily be applied to a range of situations that are not "emergencies" as the explanatory notes of the Act state this section was implemented to deal with. This allows for errant carriers to misuse s17(6) in order to avoid the notification timeframes for maintenance, installation and inspection and this potential loophole will only become more attractive to carriers as the notification timeframes increase. CoM queries why s17(6) applies to 'inspection' and 'installation' activities. This should be considered as part of the Tranche 2 amendments to the Act and Code.

11.2 Smart Poles

11.2.1 CoM reiterates its concern that section 3C of the Original Paper (and the proposed changes to the Act therein) does not align with CoM's 5G principle. This section, entitled '*Allowing development on poles rather than on utilities*', outlines perhaps the most significant suggestion of the Paper overall. In fact, CoM considers that Section 3C is strikingly different to the other recommendations therein because of the significant deviation it presents to the historical understanding of low-impact facilities as enunciated by the original LIFD. Permitting such changes in many high-density areas would be catastrophic; introducing the right for carriers to deploy their own assets in the public realm, defeats the utility of the current framework which requires sensible partnership with owners of existing assets (e.g. road authorities and utilities providers). Any changes made in Tranche 1 ought only be done so in light of CoM's strong objections to this, which will be made as part of Tranche 2.

11.3 Removal of Redundant Equipment

11.3.1 The concern for CoM anecdotally with regards to the relegation of this concern to Tranche 2 is that this has nothing to do with rollouts. The position to defer this until Tranche 2 implies a position that it can wait, which will only serve to compound the problem as 5G is rolled out and there is becoming an increasing amount of redundant equipment which will need to be addressed later.

12. Responses to Questions Posed by the Paper

12.1 CoM's responses to the prompt questions in the Original Paper have been summarised in the below table, and are identified as being either a Tranche 1 or Tranche 2 issue.

	Key Issue & Proposed Changes	Response
ISSUES DEALT WITH UNDER TRANCHE 1		
1A	**Creation of a primary safety condition**	
	Amendment to the Code of Practice: Creation of new Chapter 1A	• CoM supports the creation of a primary safety condition in Chapter 1A. • The definition of 'best practice' in 1A.4 should be updated to include 'safety.' • Provisions for adherence to industry standards and codes (1A.5, 1A.6) require changes to ensure all safety considerations are met. • It is considered that the mandated codes and standards do not always fully and properly address other relevant and ancillary safety considerations. CoM considers that carriers should assume clear and concise responsibility and liability for the assets they install in the roads reserve. This can be achieved by adding a section to 1A requiring carriers to maintain the facility to an industry standard for the duration of its existence and respond to any notification of faults by the landowner or occupier.
1B	**Standard notifications across industry**	
		• ***Refer to part 9.2 of this submission -*** Generally, a standard LAAN notice would be valuable, particularly including expected timeframes to carry out works. The recommendation includes reference to additional obligations if landowners are public utilities. CoM would advocate that consideration should be given to widening this to include local government authorities (LGA) as public land managers. CoM also considers that it would be beneficial for carriers to provide additional information where undertaking works on public open space/reserves including details of the equipment to be brought onto the land. Frequently, these works clash with proposed organised community sport and other events so the timelines will need to differ for this type of landholding. Additionally, there should be clearer explanations in the LAAN of the percentage variance for replacement or similar works. • The financial scope and details concerning compensation/rental should also be more clearly addressed. Carriers should provide quality-assessed, geo-referenced datasets to sophisticated landowners in a standard format that would allow the data (both spatial and attribute) to be transferred via an API with no or minimal post-processing effort required. The regulations should provide for ongoing notifications to landowners as situations change via easy-to-use applications (such as mobile phone apps). Currently CoM receive LAAN notifications for works with a 12-month window. While this is maybe satisfactory for an initial notification, regular updates are required in order to improve

	Key Issue & Proposed Changes	Response
		coordination with other activities that occur within the road reserve. • There should also be reference to coordination and co-operation regarding the scheduling and undertaking works to ensure minimal disruption for capital cities. • Notification activities undertaken by third parties must refer to the source client. Currently the only way CoM is notified that works are about to commence is via a Traffic Management Plan. This is frequently supplied by a consultant without reference to the name of the carrier or the nature of the works.
1C	**Withdrawal of Notifications**	
	Amendment to Code of Practice: New sections 2.25A, 3.41A 4.26A, 6.25A	• CoM agrees on the importance of formal withdrawal notice – especially where the proposed works are within public open space. Formal withdrawal notices also ensure that carriers are committed to the site. • CoM would think that compelling to carriers to sit down with landowners at the first instance to agree the procedural basis of access and activity would be a most practical approach. • CoM notes that the methods used by carriers often lack consistency. • CoM supports the proposed new sections regarding withdrawal of notifications.
1D	**Requirement to provide engineering certification**	
	Amendment to Code of Practice New section 1A.7	• There is a need to determine what "Industry Standards" will be utilised by carriers. For example, there are multitude of Australian Standards relating to traffic management (where to put traffic signs, their size etc.). These standards are primarily structured around the safety of road users. The provisions of Telco Legislation should list the standards to which carriers will be required to comply and thus shouldn't be subject to negotiations with carriers.
2A	**Clarifying the objections process for landowners**	
	Fact sheet for landowners to be made available on the department's website	• From CoM's perspective, any improvements that can be made to the objections process are welcome. • CoM supports the creation of a fact sheet for landowners and suggests that information regarding engineering certificates be included (see Part 7.2 of submission)
2B	**Allowing carriers to refer objections to the TIO**	
	Amendment to Code of Practice	• CoM raises no issues with the new provisions allowing carriers to refer objections to the TIO, given the qualification that carriers make a good faith attempt to firstly resolve the matter.
3A	**Improve coverage outcomes through better infrastructure, where safe**	
		• CoM raises no issues with the proposed changes to dimensions of antennae and satellite dishes.
3B	**Improve coverage outcomes through tower extensions**	
		• CoM raises no issues with the proposed changes to permitted tower extensions.
3D	**Encourage the co-location of facilities**	
		• CoM supports the changes to co-location volumes so that more services can be offered with less impact non visual amenity.

Key Issue & Proposed Changes	Response
ISSUES DEALT WITH UNDER TRANCHE 2	
1E Extending notification timeframes	
	• With a 5G deployment focus and CoM's preferred/recommended a whole of CBD precinct consultation process, CoM considers that time frames be extended such that: (1) there is a minimum notification period of 10 to 20 business days; and (2) the timeframe to provide a written objection is extended by 5 to 10 business days. • An increased time frame to respond to a LAAN, (i.e. more than 10 days) would assist, because it is unlikely a proposal will be evaluated by Council in 10 days. At times, LAAN notices may take 10 days to reach the correct officer. If adequate time to evaluate a proposal is given, there is less likelihood of a subsequent LAAN objection as CoM will have time to refer for internal stakeholder engagement. • Currently, it is not an uncommon practice to lodge an objection while a more detailed review is occurring as a risk mitigation strategy, if concerns arise once it has been completely evaluated.
2C Removal of redundant equipment	
	• CoM strongly supports the introduction of a mandatory requirement for carriers to remove equipment when it becomes redundant. Equipment left on open space is unsightly and the land could be used for alternative use if it was removed. CoM looks forward to providing details information as a part of submissions on Tranche 2 issues. Additionally, above ground cabling on Council assets is unsightly and should be removed if an asset is decommissioned. • Local government authorities have now been including the requirement for carriers reinstate sites to a reasonable condition including the removal of all equipment and underground cabling at the end of the lease term and where equipment is not removed, carriers are required to continue to pay rent. CoM considers that similar requirements need to be legislated. It is also suggested that granting local government authorities the ability to remove redundant telecommunications equipment/cabling etc where carriers have failed to do so would assist greatly. • Such legislation should also consider granting local government authorities the right to recover costs of the same from carriers and/or to charge a fee for the same. • A process whereby reasonable notification to the carriers could be legislated, such that it could provide a reasonable period whereby it can be confirmed to be a 5G facility. Carriers often rely on provisions of the Act and indeed the Crimes Act 1914 (Cth) – which make it an offence to interfere with a facility and outlines significant penalties including imprisonment for the same. Such provisions were never intended to permit carriers to obtain such benefits in the context of dealing with redundant or obsolete infrastructure.

Key Issue & Proposed Changes	Response
3C Allowing deployment on poles rather than on utilities	
	• CoM's submission to the Department in October 2020 provided significant commentary on concerns of attaching infrastructure on specialised poles. • As regards the possibility of the use of smart poles, it is preferred that the City of Melbourne is allowed to restrict the use of telecommunications smart poles on CoM land, and instead through current planning approval processes employ CoM's own design so CoM can control these variables. CoM looks forward to providing details information as a part of submissions on Tranche 2 issues.