

Submission:  
Consultation  
outcomes paper on  
improving the  
Telecommunications  
Powers and Immunities  
Framework

1 April 2021

## Executive Summary

The City of Sydney (City) welcomes the opportunity to provide a feedback on the consultation outcomes paper for “Improving the Telecommunications Powers and Immunities Framework”.

The outcomes paper and proposed amendments in Tranche One of the legislative amendments provides some acceptable solutions to the problems experienced by Carriers, landowner and public utilities. However, overall the City’s assessment is that the outcomes paper does not adequately address the concerns of stakeholders other than Carriers. A number of the proposed amendments are too simplistic, and do not adequately address the complexities of competing interests, nor do they allow for outcomes that balance the needs of all stakeholders. There is still significant opportunity for improvement.

The City’s initial submission raised the possibility of precinct-based planning and co-ordination by Carriers. Taking this approach will improve efficiencies in the delivery of infrastructure for Carriers and reduce the risk of duplicated and stranded infrastructure, while ensuring acceptable outcomes for the community and landowners are also achieved. This approach will ultimately result in further economic benefit for all parties, through the optimisation of the use of facilities and the sympathetic treatment of public and private land.

The City urges the Department of Infrastructure, Transport, Regional Development and Communications to further consider the interests of all parties, and take the opportunity to amend the existing legislation to allow development of framework that will optimise the interests of all parties and the community, rather than allow Carriers excessive rights to install facilities without regard to the environment they will be placed in.

The Department’s interpretation of amenity, as evidenced through amendments to the *Telecommunications Code of Practice 2018* and the *Telecommunications (Low-impact Facilities) Determination 2018*, does not take into account the complex community values and needs that make up this concept. The outcomes paper only discusses visual amenity. In a major city, amenity takes many different forms in addition to visual amenity, including but not limited to physical clutter, environmental impact, health and safety issues. Through legislative instruments, Carriers’ should be required to have regard to overall amenity of the local area in rolling out and intensifying the use of facilities. The amenity of a commercial area, for example a central business district or an inner-city high street, is just as important as the amenity of a residential area. This is not adequately addressed in the current legislation, but the City’s recommended precinct approach allows amenity considerations to be effectively implemented. In turn, improved amenity and integration of essential infrastructure in these areas will drive a high performing, globally competitive and efficient economy.

Further detail regarding the City’s position can be found in the specific responses below.

## 1. Safety and notification

### A. Creation of a primary safety condition

The City supports the consolidation of the primary Carrier safety conditions into one location in the Telecommunications Code of Practice (**Code**). However, the amended drafting does not expand on the concerns of landowners, who request that Carriers take additional steps to ensure that the matters listed in clause 1A.3 of the new Code are properly considered by Carriers before undertaking activities. Carriers need to consider these matters from the point of view of the landowner/public utility, and the revised drafting does nothing to encourage this to occur. The City's submission to the first consultation paper provides further detail of the types of areas of concern that should be regulated through this change, but they are re-listed here:

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

### B. Standard notifications across industry

The City supports the development of a standard notice template. Consultation on the proposed template should not only be with industry, but with wider stakeholders, to ensure that the template complies with Telecommunications Act obligations, but also provides landowners/public utilities with the practical information needed to assess the activities proposed to be undertaken. The use of the template should be prescribed for use through the Code.

### C. Withdrawal of notifications

The proposed amendments to the Code are insufficient.

Limiting the withdrawal of notices to when works are cancelled does not address the more common occurrence that Carriers adjust the extent and nature of the works proposed to be undertaken, and issue multiple, similar notices in respect of that work. Carriers should be required to withdraw a notice before issuing a further one, regardless of whether the works are cancelled or simply changing. In the absence of a legislated requirement to withdraw notices, there should be a

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regulated system implemented requiring Carriers to inform landowners when there are changes to scope or timing of works. Without this, landowners will continue to experience the same issues with the notifications provided by Carriers.

In addition to the proposed new drafting at clause 2.25A, Carriers should be required to notify landowners of the withdrawal within 2 business days of making the decision. This requirement should also apply to notifications for changes to scope or timing of works, as per our submission above.

#### D. Requirement to provide engineering certification

The City supports the proposed drafting, but requests that the certification is provided for all facilities installed by Carriers. Carriers would already have undertaken the engineering investigations required to produce the certification as part of its works. There is no need to distinguish between facilities where it must be provided and facilities where it is not required.

#### E. Extending notification timeframes

The proposed changes to the Telecommunications Act 1997 are supported. The City reiterates its view that Carriers need to use this consultation time to genuinely and co-operatively consult with landowners – the additional time provides an opportunity for Carriers to hear the concerns of landowners and make adjustments to proposed works to address those concerns. The City strongly supports additional legislative amendments to strengthen obligations on Carriers to work with landowners – in the City’s experience, Carriers make no genuine effort to co-ordinate with the City as a landowner or a public utility. The City’s view is that the longer notification period will not assist the consultation process unless requirements in the legislation around the nature of consultation are also strengthened.

## 2. Objections and protections

### A. Clarifying the objections process for landowners

The City has no further comments on this section

### B. Allowing carriers to refer objections to the TIO

The City has concerns with the proposed drafting, based on its experience interacting with Carriers. As noted already in the City’s submission, the City’s experience is that Carriers will do the minimum to address the concerns of landowners/public utilities before undertaking its work. The City has no confidence that Carriers will make reasonable efforts to resolve objections of landowners within the 10 business days proposed in clause 4.36A of the Exposure Draft of the Code.

The proposed clause 4.36A allows a Carrier to refer a matter to the Telecommunications Industry

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Ombudsman if the Carrier has made reasonable efforts to resolve the matter and those efforts have been conducted in good faith. This drafting only introduces another argument between the parties as to whether the Carrier has made reasonable efforts and acted in good faith. This does not assist landowners, and instead has the potential for Carriers to cut short discussions with landowners. The only action available to landowners if a Carrier does not comply with the current drafting is to commence proceedings in the Federal Court. This does not provide a timely or cost-effective solution for landowners. If this drafting is to remain, further detail is required regarding how Carriers will be required to comply with the obligations of the clause, and there should be penalties for non-compliance.

### C. Removal of redundant equipment

The further consultation to establish a framework to remove redundant equipment is supported.

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

### A. Improve coverage outcomes through better infrastructure, where safe

The City strongly objects to the proposed resolution of this issue. Landowners have raised concerns around intensification of use of existing locations. Landowners are requesting better planning of the locations of facilities, and a more co-ordinated approach to establishment of these locations. Landowners and public utilities wish to ensure that Carriers are:

- considering the use of land from the landowner/public utility perspective; and
- co-ordinating installations,

so as to preserve the quality and condition of the land while also ensuring telecommunication services are able to be provided to the population.

The proposed amendments to the *Telecommunications (Low-impact Facilities) Determination 2018* allow the extension and/or intensification of existing sites, but do not impose any additional obligations on Carriers to undertake any better planning or design in relation to the location and siting of facilities. The solution proposed does not impose any additional obligations on Carriers to consider the land or co-ordinate the use of land before installing sites, but significantly increases the rights of Carriers to intensify use on sites.

This outcome is not satisfactory. It is possible for the interests of landowners/public utilities and Carriers to co-exist. The City has suggested legislative change allow a more co-ordinated, precinct-based approach to the installation of facilities. The City requests that these amendments are re-considered, and a more nuanced approach to legislative amendments be issued for consultation.

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At the very least, the amendments to the *Telecommunications (Low-impact Facilities) Determination 2018* need to create some exemptions from the proposed ability to intensify use in locations – for example, if a facility is adjacent to a heritage item, it should be excluded from the ability to expand the dimensions of a facility.

## B. Improve coverage outcomes through tower extensions

Refer to our comment regarding 3A above. The same comments apply.

## C. Allowing deployment on poles rather than on utilities

The City's earlier comments regarding this proposal, and our comments at 3A above continue to apply. Carriers should be required to co-ordinate and minimise the impact of the facilities on land. The City continues to maintain that poles should never be a low-impact facility under the Telecommunications Act. Again, at the least if a pole is to become a low-impact facility, obligations must be imposed on Carriers to ensure that amenity (as broadly defined in the City's executive summary) is preserved, for example in cluttered city streets or adjacent to heritage items or items of national significance.

## D. Encourage the co-location of facilities

The City objects to this proposal. Carriers should be required to co-use facilities until they are being used to the maximum amount. Only then should co-location of facilities be considered. The benefits of this approach will allow savings for Carriers and better community outcomes through reduced clutter.

## Conclusion:

The City of Sydney supports an updating and re-thinking of the current telecommunication legislative instruments. The City of Sydney wishes to work with Carriers to ensure it provides a modern, efficient and co-ordinate central business district and local government area. The rollout of modern and effective utilities is supported. However, it is the City’s strong view that this rollout should not be at the expense of its community, or the environmental and heritage amenity of that community.

The City remains confident that an appropriate solution can be found to address the needs of all parties. The submissions contained in this paper are intended to support the Department to understand that the views of all stakeholders have not been adequately considered in the outcomes paper.

The City would welcome an opportunity to discuss these proposals further with the Department. Should you wish to speak with a Council officer about our response to the enquiry please contact myself on [REDACTED]

Yours sincerely

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[REDACTED]  
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