

A submission by AMTA on behalf of the Mobile Carriers Forum
to:

Department of Infrastructure, Transport, Regional
Development, Communications and the Arts

on:

Consultation Paper – Possible amendments to the
Telecommunications in New Developments Policy – Mobile
Connectivity and Other Measures



About AMTA

The Australian Mobile Telecommunications Association (AMTA) is the peak national body representing Australia's mobile telecommunications industry. It aims to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia. Please see www.amta.org.au



Introduction

The Mobile Carriers Forum (MCF) is a division of the Australian Mobile Telecommunications Association (AMTA). AMTA is the peak industry body representing Australia's mobile telecommunications industry. MCF members include Telstra, Optus and TPG Telecom. These three companies are often referred to as the 'Mobile Network Operators' (or 'MNOs').

The MCF welcomes the opportunity to provide this submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts' (DITRDCA) call for submissions on its 'Consultation Paper – Possible amendments to the Telecommunications in New Developments Policy – Mobile Connectivity and Other Measures, October 2023'.

We agree with the proposal to clearly state the Government's expectations on Developers when it comes to the provision of mobile network service in new developments. We are advised that the purpose of the Consultation Paper is to seek views from stakeholders on possible amendments to the Telecommunications in New Development (TIND) Policy to better facilitate the provision of mobile telecommunications infrastructure in new developments. To this end, the MCF's feedback is contained in section A of this submission – Comments on Part B of the marked-up TIND.

The Consultation Paper also contains a number of proposed amendments to provide greater clarity and better service outcomes for fixed line services. Although this response is confined to amendments specifically relating to mobile telecommunications infrastructure, we note that to provide for mobile connectivity there is a dependency on fibre, pits and pipes, to ensure mobile fibre backhaul connectivity can be available economically and in realistic timeframes.

The Consultation Paper notes this proposal 'is intended to signal a first step from the Australian Government in addressing mobile connectivity in new developments, rather than an end point', and that 'The consultation and implementation of the proposal will help inform the work plan of the Working Group and the roles of different stakeholders in improving mobile coverage'. AMTA looks forward to further engaging with the Working Group on this matter and appreciates the elevation of this issue by the Minister for Communications and State and Territory Planning Ministers. We also welcome recognition of the need for a coherent approach for prioritising and accelerating planning and approvals for communications infrastructure, in new developments and growth areas.

To this end, we consider there is a gap in the draft TIND policy concerning the need for the Federal Government to create an expectation that State and Territory Governments and their Agencies provide additional and expanded planning guidance to Developers about how to comply with Part B of the TIND. This guidance can generally be consistent across the States and Territories but should be included in the same guidance for structure planning in growth areas/new development in each State and Territory. This is further detailed in section B – Comments on the Consultation Paper, along with other comments from the MCF in relation to the Consultation Paper.

A: Comments on Part B of the marked-up TIND

As noted above, the MCF supports the proposal by the Government to clearly state expectations on Developers in relation to the provision of mobile services in new developments. The following comments relate to specific language in the draft TIND Policy, which the MCF considers could be revised to support the smooth implementation of the revised TIND Policy and ensure the intended objectives are met.

4.1 Consumer Outcomes

The final sentence 'Consumers can also make enquiries with the Developer regarding which carrier has been engaged to service the development' should be deleted or altered. It suggests that a carrier enters into a formal arrangement with the Developer of the land to 'service' the development.

The community will most benefit by the presence of multiple MNOs servicing a development and this should be encouraged by the policy. MNOs are likely to service the area at different stages of the development and this may be after the Developer has moved on and engagement would be with other Developers, State Government, council or the relevant landowners.

4.2 Developer Obligations

We generally agree with the intent of the Government's expectations of Developers in this section.

However, this section notes 'Irrespective of whether it is a 'greenfield' or 'infill' development, a Developer should engage with carriers up front to find out if there is existing coverage and if so, whether there is sufficient capacity given the number of proposed units being build. If there is not existing coverage, then a Developer should follow the expectations listed above'.

We note that this is a similar process to that which been mandated by the City of Cockburn in Western Australia. Cockburn's 'Local Planning Policy 5.19 – Structure Plans and Telecommunications Infrastructure', requires structure plan proponents to demonstrate consultation with telecommunications infrastructure providers. In a letter to industry in March 2022, Council has advised in response to this requirement, the City is regularly advised by Developers and their consultants that telecommunication providers rarely identify sites in developing areas suitable for their infrastructure needs prior to land being subdivided, developed and sold, on the basis that they are hesitant to commit prior to development for a range of commercial and technical reasons'.

Anecdotally we understand that this process has recently improved in Cockburn, however we believe that this feedback underscores the complexities of early radio-planning to pinpoint sites without an understanding of factors such as the staging of development and the business case.

This section also states 'These expectations are focused on matters within the Developer's control. For example, when a Developer engages early with a carrier but there are delays in the carrier obtaining necessary planning approvals for mobile infrastructure, then the Developer is not necessarily at fault'. In response we advise that 'early engagement' should not be the benchmark - rather the commitment to meaningful engagement by each Developer should be the gauge of success. As articulated in other parts of this submission, we also consider that guidance for Developers produced by State and Territory Governments and Agencies on how to factor in mobile telecommunications infrastructure into Structure Planning in growth areas is critical.

“4.3.13” Charging (please note the numbering reflects what is in the draft TIND)

In this section, the TIND notes that ‘for mobile connectivity, the location and timing for the deployment of facilities is often a commercial decision determined by the relevant carrier having identified areas which would provide the greatest coverage for use by the community. Developers may, however, choose to engage a carrier on a commercial basis to secure mobile connectivity for a new development. There may also be Australian Government funding available to carriers in certain locations, such as peri-urban or regional areas.

We agree that the importance of planning telecommunications infrastructure in new developments cannot be overstated, however providing this infrastructure in advance of land release and development of dwellings is rarely cost-effective. AMTA, encourages Government co-contributions, particularly in areas where a need for service has been identified in advance of development. As stated above engagement should consider multiple carriers to strive for the best connectivity outcome for the community.

We submit that the Governments’ objectives could also be advanced with co-funding of shared infrastructure. For example, government funding for sports reserve lighting in a growth area (otherwise funded by Council at a later date) and co-located mobile network infrastructure (otherwise funded by MNOs at a later date) could translate into a substantial social, environmental and financial ‘multiplier’ and colloquially a win-win.

In addition, we also note that the TIND should create an expectation on Crown Land Agencies to consider the availability of Crown land for telecommunications infrastructure within or adjacent to growth areas at the time of structure plan preparation. In doing so, the rental or license arrangements need to be reasonable, non-discriminatory, and promotes site sharing by not imposing unreasonable charges.

4.3 Co-location

We note this proposed section of the TIND reflects the requirements found in the Telecommunications Code of Practice 2021 that requires carriers to use all reasonable steps to investigate co-location opportunities.

We submit that the sharing of passive infrastructure should be incentivised to achieve the government’s objective. Whether negotiating with Developers on freehold land or Crown land agencies, a co-locating MNO that seeks to locate all of their equipment within the primary user’s existing site should pay no additional annual rental or levy (co-user fee) to the landowner.

4.4 Network and Service Standards

This section expresses an expectation that mobile services will meet the reasonable needs of consumers in new developments. It notes that whilst carriers are best placed to advise and decide on technologies to be deployed, it would be expected that the minimum technology provided for voice and data services would be 4G.

In response we note that this provision underscores the need for Developers and landowners to cooperate with MNO’s and MNIPs so that obstacles during site selection, negotiations over tenure and deployment are minimised. We also believe that the identifying of specific technologies such as “4G” should be removed and be technology agnostic to keep pace with mobile technology advances.

B: Comments on the Consultation Paper

In the section of the Consultation Paper titled “Discussion of Possible Amendments” there are four amendments related to mobile connectivity. The MCF has carefully considered these amendments and provide the following feedback.

1. Developers consider mobile connectivity as part of the overall development application process.

The MCF considers that the TIND needs to focus on the early strategic planning process and consideration of the need for mobile connectivity in growth area strategic planning and structure plans. This is generally not referred to in the ‘development application process’, which relates to the assessment of a particular proposal against a policy and strategic plan.

Whilst Developers are a central stakeholder in this process, so too are local governments, planning authorities, and State and Territory government agencies.

This expectation sets out that mobile connectivity should be considered as part of the overall development application process and that this should be treated at a similar level of importance as other utilities, such as water, electricity and sewage. We generally agree that there is an equivalence of importance but the focus of the TIND should be on strategic or ‘structure’ planning rather than the ‘development application process’.

The process of planning for mobile telecommunications infrastructure in new developments is different from planning for other utilities, such as water, electricity, sewage and fixed line communications, because these are intrinsically linked to servicing each lot whereas mobile networks provide connectivity to the end user wherever they may be. Locations of network infrastructure vary across each MNO due to the number and type of end-users, the radio spectrum being used, and the location of surrounding facilities in their respective networks, as well as topography.

As outlined further in this submission, the MCF considers that the TIND should also require guidance or ‘practice notes’ on provision of mobile infrastructure, and that this should be provided to developers and local Government by State/Territory statutory land agencies. We note that this is ‘guidance’, not regulation.

The Consultation Paper notes that ‘The Department understands that jurisdictional planning agencies often refer to the TIND Policy so including these expectations clearly states the Government’s expectation and intention that telecommunications are considered in the similar way as making provisions for other utilities/services.’

Whilst the TIND may have presented enough guidance for developers on the Government’s expectations for provision of Fixed Line Infrastructure, we do not consider that Part B of the TIND provides enough guidance for Developers to act and meet government expectations on provision of mobile telecommunications infrastructure.

Developers and their practitioners/consultants will often refer to a single point of truth regarding all requirements in each jurisdiction for growth area plans. Without guidance from State/Territory statutory land agencies on how to execute the expectations within the TIND, Developers are unlikely to know what to do. In this regard the MNOs are well placed to provide further advice as to how Developers can consider the Guidelines.

2. Early engagement with carriers on mobile connectivity

The Consultation Paper notes that ‘The Australian Government expects Developers will engage with a carrier early to ensure mobile connectivity is in place prior to the selling or leasing of a building or unit’.

In response, we note that the development of a growth area can often stretch over several years with precincts being released in multiple stages. Basic coverage and a level of service will often be in place, even if limited, in designated growth areas from the outset. This coverage may for example come from a ‘macro’ type facility servicing a nearby highway, but it also services land in the growth area. However, as demand increases for network service, and as precincts are released and consolidated in that growth area, each mobile network would require augmenting to cater for this. This will often involve ‘infill’ tower sites close to where there is demand within the growth area itself.

We note that mobile connectivity also relies on fibre infrastructure for mobile site backhaul. Early engagement and planning by Developers (and Agencies responsible for land development) should also consider such requirements, and not just focus on setting aside land for towers. This will enable proactive planning to ensure mobile fibre backhaul connectivity can be available economically and in realistic timeframes.

In addition, where small cell (micro) infrastructure is required within the development, there is additional pit and pipe considerations. It will be important the developer engages the MNO to ensure these requirements are planned to avoid construction disruptions and/or high-cost installations after the development is complete. We also note that such forward planning may allow for cost sharing with the use of multi-function poles.

In relation to timing we generally agree with the proposition that ideally engagement would occur at the ‘urban design’ or ‘masterplan’ phase, but engagement should occur at several points in time throughout the process. For example, the MNOs should be notified:

- During strategic planning of a growth area by State & Territory Departments, Agencies and Councils
- At the time of the rezoning of land for ‘urban growth’,
- At the time that a Structure Plan or Precinct Plan is being developed and approved so that the MNO has visibility of the sequencing and timing of development.

It would assist proactive planning at all levels, both from a perspective of identifying new infrastructure to support a development as well as impacts on existing infrastructure, to develop improved solutions to share collated proposed development information with service providers. The ability to ingest spatial data on proposed developments into planning systems can play a significant role in enabling effective infrastructure planning. We note that several State Governments have a digital twin capability that should allow for this exchange and sharing of information.

Whilst the TIND recommends that this be a ‘Developer obligation’, AMTA considers that State Departments, State Agencies and local government are a critical part of this process, and that they should be responsible for these tasks in addition to ‘Developers’ being required to engage with MNOs. Such an approach is consistent with the State and Territory Planning Ministers commitment in the August 2023 Communique.

Local councils and other authorities have a key role in new developments as they often finalise precinct structure planning and approve these, or lodge them with the State or Territory Government for approval. Some councils have outdated or inconsistent rules for telecommunications facilities in new developments. For example, this can include a minimum setback or ‘buffer zone’ for a telecommunications facility from residential land use.

We note that the planning and approval processes for telecommunications facilities vary across States, Territories and councils. This causes uncertainty, delays and higher costs for infrastructure development. The TIND could be revised to include principles to encourage consistency as follows:

- Encourage State and Territory land development agencies and councils to design planning requirements and schemes that support and facilitate telecommunications facilities in new developments;
- Make planning processes suitable for new developments (including infill development) with ‘fit for purpose zoning and relaxed requirements’;
- Generally, harmonise planning and approval processes across States and Territories to improve efficiency and reduce costs.

We note that such initiatives are consistent with AMTA’s State and Territory 5G Readiness Assessment.

This approach would potentially avoid a scenario where mobile carriers are inundated with multiple requests from Developers for a small number of lots in respect of a singular suburb or development. This would increase the administrative burden on MNOs, without achieving the purpose intended through the Government’s expectations. This situation can also be mitigated by the guidance being clear as to the definition of “Developer” and any applicable scope considerations.

3. Consider land that is appropriate for mobile telecommunications infrastructure.

The Consultation Paper notes that there is an expectation that Developers will identify or set aside one or more sites or spaces that are appropriate for mobile telecommunications infrastructure, and that carriers may also consider installing telecommunications facilities on existing or proposed infrastructure.

It is the MNOs preference that each growth area Structure Plan (or equivalent) will contain guidance about the staging of development to support the delivery of utility infrastructure as trigger points are reached. Greater coordination with MNOs and Mobile Network Infrastructure Providers (MNIPs) at this point would support early provision and better outcomes.

For example, confirmation of the designation of land for a recreation reserve or neighbourhood shopping centre could provide for sharing of pole infrastructure for oval lighting and mobile antennas, or designation of land for a water tank or reservoir could ensure that there is room for a mobile telecommunications tower within a designated shared or adjacent compound area.

We emphasise that it is important that guidance is provided in Structure Plans that identify the types of siting solutions that are appropriate so that this strategic support then translates into a reasonable expectation of development approval when it comes time for a development application to be lodged and assessed.

The guidance should not necessarily be site specific given the uncertainties around radio frequency planning years in advance when demand for a service in any given area isn’t yet understood. Factors such as the complexities of radio-planning, topography and service demand cannot be used to identify specific sites that will, with any certainty, be used for mobile infrastructure.

For example, it may be that there are multiple designated recreation reserves in a suburb that will in future contain sports oval, or public open space. Given the uncertainty about radio-frequency planning, it is preferable that the siting within these spaces be identified generally as an appropriate solution in these reserves rather than designating a particular site within one particular reserve. In addition, Council’s ‘Plans Of Management’ for such areas often do not address the provision of

telecommunication services and identification that telecommunication uses are permissible and compatible with land uses such as parks, recreational areas and open spaces. Such an acknowledgement would encourage services in these areas.

Likewise, guidance should identify as appropriate telecommunications towers being established on land that is adjacent or near elevated land designated for water reservoirs, water tanks, electrical sub-stations, and that this general scenario should be identified in the Structure Plan as representing an appropriate and orderly planning outcome.

This type of guidance is important to ensure that future residents near places designated as appropriate for the establishment of telecommunications towers understand this. If this is clear then it has the potential to reduce friction during the development application process.

This option is generally supported by the MNOs subject to matters outlined above.

4. Reasonable efforts to reach agreements with carriers

The Consultation Paper notes that “This expectation is that Developers make all reasonable efforts to reach ‘fair terms’ in agreements with carriers for access to land for the deployment of telecommunications facilities”. In response, we note the following.

Suitable sites for mobile network facilities can often be found on Crown land and land used for public purposes. This land includes but is not limited to recreation reserves, retarding basins, easements for high voltage electricity and road reserves. As explained above, it is therefore imperative that the TIND identifies State and Territory Departments, Agencies and in some cases local government as being central stakeholders in this process. We note that all of these State based entities have different processes and procedures to enable the leasing of such land by telecommunications providers leading to deployment delays and with varying cost imposts.

It is likely that in many cases Developers will be negotiating terms in agreements with mobile network infrastructure providers (MNIPs) for tenure. With divestment of network tower assets, the portfolio of towers previously owned by the MNOs are now owned by the MNIPs including but not limited to Amplitel, Indara and Waveconn. These MNIPs are actively expanding their networks of towers into new growth areas. It will of course be necessary for the MNIPs to engage with the MNOs to determine where and when the MNOs are seeking to invest in providing additional service, however we anticipate that Developers will also need to actively engage with MNIPs in addition to MNOs.

For completeness and to reflect the new marketplace for mobile network infrastructure, we recommend that the TIND identify and explain the role played by MNIPs. However, we note that network requirements will always be framed by MNOs, and Developers should be aware that engaging with MNIPs alone cannot replace the need to work with MNOs or should not be considered a substitute for engaging directly with an MNO.