



SSROC Submission

Improving the Telecommunications Powers and Immunities Framework

Department of Infrastructure, Transport, Regional Development and Communications

Submitted via email to: powersandimmunities@communications.gov.au

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Introduction

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of eleven councils. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member councils cover a population of over 1.7 million, or one third of the population of Sydney.

The land covered by the SSROC region extends from the southern shores of Sydney Harbour to the edge of the Royal National Park in the South, and from the Tasman Sea in the east halfway to Parramatta in the west. The region covers 679 square kilometres and is rich with waterways, coastal zones, nature reserves, national parks, bushland as well as natural and protected areas. We also have highly urbanised areas such as the Sydney CBD through to suburban and peri-suburban areas.

Our Submission

This inquiry provides a valuable opportunity to represent the priorities and concerns of our member councils and to make recommendations for improvements to the telecommunications powers and immunities framework. Whilst many of the proposed changes are welcome, a number will benefit from a broad rethink to enable local government to work with carriers to manage some of the unintended outcomes which have the potential to negatively impact the amenity of local areas and exacerbate community concern.

Executive Summary

SSROC believes that the move to 5G is a quantum technological change and understands that this will result in a dramatic increase in the number of small cellular stations that will be deployed in the public domain. Whilst improvements to communication capacity including faster speeds and greater bandwidth will be of great benefit to businesses and much of the community, there is a high risk that the negative impacts of variety, placement, numbers of poles, random locations and cumulative impact have the potential to severely diminish the amenity of public spaces.

SSROC's understanding is that with the introduction of 5G, the geographical areas for mobile cells¹ will get smaller and therefore there will be a need for more network cell sites. This will be most evident in highly dense areas of the Sydney CBD as well as suburban business districts, retail and commercial areas and areas of high population density. Over time, as more uses demand additional bandwidth, carriers will see business drivers for increasing the number of cells and deploy a greater density of smaller cells, potentially further diminishing the urban amenity.

The current definition of "low impact" facilities should urgently be reviewed as many of the proposed facilities do not have low impact in the opinion of councils and of the public or when compared against state planning laws. As 5G deployment matures and more carriers require access for deployment, the cumulative impact of so-called "low impact" network elements, will continue to have a negative effect, deteriorating public amenity through congestion or over abundant poles and facilities etc.

SSROC recommends the following:

- Councils should have the power to approve the location and installation of 5G infrastructure within its local government areas, particularly when located on council infrastructure.
- Carriers should be required to provide details of their plans for cell deployment on a whole of precinct basis rather than one cell at a time, to ensure that the cumulative impact of deployment can be considered.
- As 5G supports cell technology sharing, this should be strongly encouraged or enforced through changes to the Telecommunications Act. This could avoid the proliferation of small cell installations cluttering the public domain and streetscapes.
- Cell technology design and deployment be mandated to blend into the environment, lowering the visual impact on the community and the urban landscape.
- Urgent consideration needs to be given to installations that are currently termed low impact facilities, where carriers are not required to give regard to following:
 - heritage conservation zones
 - impacts on pedestrian movements
 - blocking view lines
 - council codes and infrastructure standards within high-quality public areas
 - co-use of existing facilities
 - minimising the size of equipment or facility and
 - keeping branding and telecommunications advertising minimal and subtle.

It is SSROC's view that an important opportunity has been missed in this review, to lay out the case for and help facilitate local councils appointing a neutral host to manage telecoms infrastructure across some or all of an LGA serving all carriers in a coordinated manner without unnecessary duplication of infrastructure or the same planning concerns about disjointed and unsightly deployment and ultimately higher costs to consumers.

¹ It is understood 5G wireless devices in a cell are connected to the Internet and telephone network by radio waves through a local antenna in the cell, and that carriers need to deploy huge numbers of small access points in cities, instead of relying on a few big cell towers as they do today.

Background

SSROC understands the importance of telecommunications infrastructure to support citizens and businesses. With the rapid and priority introduction of 5G it is critical to find an appropriate balance between the demand for better mobile services and the deployment of modern and effective technology, with appropriate planning laws to protect public safety and limit environmental impacts, as well as to allow community input into the planning process.

While carriers desire to speed up approval processes, reduce their costs and reduce timeframes, this needs to be balanced against satisfying planning laws which are designed to protect public safety, limit impacts on the environment and ensure that the community is adequately consulted. Industry expressing concerns that, “descriptions in the LIFD are outdated and not flexible enough to support the development of new technologies” is consistent with the push by carriers over many years to roll out telecommunications infrastructure outside the planning process.

The Low Impact Facilities Determination (LIFD) should not be used to override important planning considerations and community concerns. Any new telecommunications infrastructure should be assessed and approved by the local planning authority. Slim poles or smart poles are a substantial piece of infrastructure and issues of visual amenity, siting, heritage concerns, safety considerations, structural integrity and potential visual interference to traffic, are important reasons that this infrastructure should not be considered low impact and should be determined by the planning process. The planned growth in population densities means this issue will have increasing importance, particularly as increasing demands are placed on the public domain by more users. The suggestion that these structures should be considered a low impact facility raises serious concerns for councils, the majority of which object to any such infrastructure being installed without council approval.

In relation to specific numbered proposed amendments, SSROC makes the following comments:

1. Safety and Notification

A. Creation of a primary safety condition

SSROC fully supports the proposal that safety of telecommunications facilities is paramount, and the focus on maintaining the structural integrity of infrastructure and assets on which telecommunications equipment is installed. Ensuring the structural integrity of telecommunications infrastructure/assets has been an ongoing area of concern for councils. Councils would like to see existing safety obligations made more explicit, standards to be specified and enforceable. Increased inspection and maintenance regimes in agreements between carriers and public utilities is also supported.

Additionally, further consideration needs to be given to installations that are currently termed low impact facilities, where carriers are not required to give regard to following:

- heritage conservation zones
- impacts on pedestrian movements
- blocking view lines
- council codes and infrastructure standards within high-quality public areas
- co-use of existing facilities
- minimising the size of equipment or facility and
- keeping branding and telecommunications advertising minimal and subtle.

Proper consideration of these impacts should be through regulation which is enforceable and recognised by the TIO.

B. Standard notifications across industry

SSROC supports standard notifications across industry, as landowners need information which contains the appropriate amount of detail and which is provided in a timely manner. This will allow better decisions to be made on the impact of proposed activities. This could also reduce the supplementary work that a council would need to undertake if inadequate information is provided, resulting in quicker decision making and more efficient installations.

Notifications should include proposed installation start date, duration of works, traffic management plans, pedestrian access plans, clear location diagrams, clear footpath width dimensions for pedestrians, distances from businesses and or resident entry points and photographs or photomontages of the proposed units or equipment and distances to the next facilities of the carrier and its relationship to an approved precinct installation plan.

C. Withdrawal of notifications

SSROC supports the withdrawal of a notification if a proposed activity is cancelled or indefinitely delayed. A new notification should be issued when work again commences or is rescheduled. This is good business practice and provides the community with certainty about development intent. This proposal would assist in reducing costs and inconvenience to councils.

D. Requirement to provide engineering certification

SSROC supports this requirement, as structural integrity and safety are of primary concern for councils. The focus as currently drafted, appears to be on structural safety. However, if the installation is pole-mounted, the issue of pole location and pole frangibility are particularly important considerations in road safety.

SSROC also agrees with the ALGA submission supporting an industry code and specification of a time limit in which to lodge the engineering certificate. Landowners have a right to know within a reasonable timeframe that equipment has been installed correctly and to Code requirements. This is particularly important in road reserves.

Technical drawings and structural certification should be provided with the notification (clearly stating the responsible entity that issued them) and definitely before installation. Structural certification will provide land owners and occupiers certainty that all structures and equipment have been built and installed in accordance with all relevant Australian, and in some instances international standards. Post construction certification must also be provided. If the installation is pole-mounted, pole location and pole frangibility which is a particularly important consideration in road safety, should also be included.

E. Extending notification timeframes

SSROC supports the extension of the minimum notification timeframe for utilities and road authorities from 10 to 20 days and the objection period from 5 to 10 days. Councils have concerns regarding the limited time to assess proposals, particularly with availability of staff to undertake site inspections and prepare reports. Additionally, all processes need to be regulated and clearly set out the rights and obligations of each party including all landowners, not just public utilities and road authorities.

Additionally, SSROC recommends that there should be a requirement for consultation prior to notification for new installations as part of a precinct installation plan. Carriers should be required to properly and genuinely consider objections and engage with landowners to coordinate and resolve issues rather than just rely on rights under the Telecommunications Act.

Councils maintain that being given as much notice as possible by carriers allows councils to schedule other works to coincide with carrier works, leading to less inconvenience for the public and cost savings. It is also good business practice to engage with stakeholders in a timely manner and provide as much notice as possible. In some cases, carriers would have a forward planning schedule which would allow them to give much longer notification than 20 days.

2. Objections and protections

A. Clarifying the objections process for landowners

SSROC supports the development of factsheets to clarify the process and provide guidance to landowners. The factsheets should be developed for different audiences, such as landowners, councils and the community, and made available in a number of ways/communication channels. Additionally, carriers could include a reference or link to the factsheets in the notice given to the landowner or occupier.

B. Allowing carriers to refer objections to the TIO

SSROC is comfortable with this proposal. If there is little chance of a resolution it is reasonable for a carrier to refer a matter to the TIO. As the consultation paper points out, there is already a disincentive for disputes to be referred to the TIO by carriers, as the cost to resolve disputes is borne by carriers. However, the grounds for objection need to be expanded to include the list contained in our response to low impact facilities definition in 1. A above.

SSROC supports resolving a dispute between the parties without reference to the TIO as preferable from both a cost and stakeholder engagement model. There is potential for the landowner to be disadvantaged if the carrier automatically refers the matter to the TIO without providing the necessary information on the proposal with the LAAN or without the carrier properly engaging with the landowner.

C. Removal of redundant equipment

SSROC supports making the removal of redundant equipment a mandatory requirement in an Industry Code. If equipment no longer transmits it should be removed within a reasonable maximum timeframe to reduce unnecessary street clutter, to reduce the structural load on assets and potentially allow for other equipment to be installed in its place (particularly with the larger volume of equipment which will be required for 5G). SSROC also recommends an obligation be included to update equipment and structures when technology changes and size and impact can be reduced.

Currently only carriers are allowed to remove redundant equipment. It may be worth investigating the possibility of carriers being able to enter into an agreement with the landowner to provide rights to the landowner to remove redundant equipment, with appropriate compensation for the cost of removal and disposal.

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

A. Improve coverage outcomes through better infrastructure, where safe

The proliferation of telecommunications equipment with the rollout of 5G on state and local government land and infrastructure and greater levels of co-location are yet to be fully understood. SSROC is in agreeance with the Australian Local Government Association (AGLA) submission in that this needs to be managed before it gets out of control. Local government needs to be part of the planning process in relation to the extent, form and location of this infrastructure. Installations in road corridors are of particular concern to councils from a safety perspective and should be approved by the responsible road authority.

SSROC recommends lodgment of a development application on a precinct scale through the local planning system. This would ensure proper community consultation, that environmental impacts are assessed, that better designs and outcomes are delivered, and that individual location is taken into account including the following aspects;

- heritage conservation zones
- impacts on pedestrian movements
- blocking view lines
- maintaining and extending the tree canopy²
- council codes and infrastructure standards within high-quality public areas
- co-use of existing facilities
- minimising the size of equipment or facility and
- keeping branding and telecommunications advertising minimal and subtle

Communities want telecommunications infrastructure but not when it sacrifices their community amenity. Communities should be consulted to understand if they would choose a slightly reduced broadband speed/capacity, rather than lose their visual amenity, heritage places and for installations to have negative environmental impact. It cannot be automatically assumed that communities are willing to accept more infrastructure to increase their broadband speeds/capacity.

B. Improve coverage outcomes through tower extensions

SSROC does not support this proposal as it has the potential to create more urban blight through poor design and lack of consultation. Each of the proposals (except the proposal on co-location of facilities) seeks to increase the current maximum permissible size of telecommunications equipment or introduce new LIFD categories. Additionally, there are concerns about the need for separate cabinets in the public domain adjacent to poles.

SSROC also recommends that evidence to show there will be significant benefit from extending tower heights and dishes needs to be provided to justify the assumption that this is the case, prior to making any changes to the LIFD.

² The Greening our City Premier's Priority aims to make Sydney and its surrounding suburbs more sustainable and vibrant by increasing tree canopy and green cover, with a goal of planting one million trees by 2022. This is part of a broader commitment by the NSW Government to plant five million trees by 2030.

C. Allowing deployment on poles rather than on utilities (slim poles)

SSROC does not support allowing unfettered deployment of new carrier-owned poles in the public domain in preference to deployment of small cells on existing council-owned or utility poles under a prescribed approvals process.

Firstly, SSROC considers the terminology and description of “slim poles or smart poles” is not appropriate nor complete in the Consultation Paper. The appropriate terminology in the lighting industry and from smart cities providers is Multi-Function Poles (MFPs). The term “Smart poles” has proprietary connotations and “slim poles” is highly unusual terminology that is not widely recognised.

The purpose of MFPs is to house multiple telecoms and smart city technologies in the same unified construction, cleaning up street clutter and maintaining a high standard of amenity in doing this. Also, MFPs can negate the need for separate cabinets. Sole purpose MFPs driven by telecoms carriers undermines the fundamental purpose of MFPs which are designed to house:

- 4G / 5G Small Cells
- Public Wi-Fi
- CCTV
- Electric Vehicle Charging
- General Power Outlets
- USB Outlets
- Speakers
- Functional & Decorative Lighting
- Traffic & Pedestrian Signals
- Way-Finding & Dynamic Signage
- Banner Arms
- Help Buttons & Microphones
- Smart Controls & Sensors

Additionally MFP's may facilitate the potential for telecommunication carriers to use these poles to collect sensitive public information including but not limited to:

- Video footage
- Facial recognition
- Individual profiling through Wi-Fi and 5g
- Reselling pedestrian and vehicular metrics
- Advertising potential

These above matters would benefit the pole providers and the carriers solely and with substantial monetary potential. Councils are clearly the appropriate party to manage this diverse range of public infrastructure and should not be obligated to a carrier with regards to each addition or modification to an MFP therefore ceding control of the future ‘smart city’ to third parties.

Secondly, SSROC recommends that poles need to be assessed and approved, as they can potentially pose a safety hazard and interfere with future planned council works and upgrades. Street poles are a substantive piece of infrastructure, which means they need to be carefully assessed – including visual amenity, siting, frangibility, heritage concerns, safety concerns (including road safety), and structural integrity. These are all of concerns to local government. The size and width of the pole may also pose impaired visibility to traffic and pedestrians.

The example of an MFP used in the discussion paper was not provided by a carrier. A third party developed a smart pole with the land owner (City of Sydney) as a joint venture with a specific aim of providing lighting, free public Wi-Fi and a carrier-agnostic telecommunications equipment to ensure co-use of poles. In the example provided, the landowner had total say on the holistic design for the precinct. This is precisely the opposite direction that the changes in the Consultation Paper propose, namely that three or four different carriers would have the right to place MFP poles wherever they liked on the land and the landowner would have no say. The result over time would be many more poles in an uncoordinated fashion.

SSROC recommends that MFPs (otherwise described as slim or smart poles) should never be considered low impact under the Telecommunications Act. Consultation and agreement with local councils and carriers should be mandatory. There should be an obligation on carriers to co-use equipment and to locate equipment on facilities if a council or utility provides them (i.e. street poles) and introduce a requirement for the impact to be considered at a precinct level. The benefits in this regard would be less poles and better amenity through taking a strategic co-use approach by precinct, creating coordinated coverage, lower capital and ongoing cost for carriers resulting in savings to consumers.

D. Encourage the co-location of facilities

SSRSOC recommends that co-use of equipment should be the highest priority. Co-locations should be secondary. Limits could be increased but only after co-use is demonstrated as not possible for that site. Co-use of equipment will have far greater savings and community benefits than co-location.

The deployment of 5G will lead to a proliferation of telecommunications equipment on state and local government managed land and infrastructure. If amendments in this section are adopted, it is likely to result in very significant changes to the nature of our cities and towns and the control that councils can have over street clutter and potentially unsafe pole deployment.

The argument that increasing the height of existing infrastructure could reduce the visual impact because fewer antennae may need to be deployed overall, would on the surface seem logical. However, there is no evidence that this will occur or any guarantee that carriers will not simply install more antennae at greater heights.

SSROC concurs with concerns raised by ALGA in their submission including:

- The potential to increase antennae projections from 3 to 5 metres. Is there definitive evidence that the 3 metre antennae are inadequate?
- Is there evidence that the existing 1.8 metre satellite dishes are inadequate and that the 2.4 metre dishes will substantially increase services? What percentage of improvement will there be?
- Colour matching does not change the fact that these structures are larger. The issue of concern for councils is that these proposals are seeking to push larger devices into the LIFD. Dishes of 2.4 metres are not low impact.
- The consultation paper argues that tower extensions, if extended to commercial areas, would also result in fewer towers being deployed overall. Local government would again postulate that there is no evidence that this will occur or any guarantee that carriers will not simply install more antennae at greater heights.

Conclusion

SSROC welcomes the opportunity to provide a submission on improving the telecommunications powers and immunities framework. While some of the proposed specific changes are welcome, a number of proposals are not supported in their current form.

It is SSROC's view that an important opportunity has been missed in this review, to lay out the case for councils appointing a neutral host to manage telecoms infrastructure across some or all of an LGA serving all carriers in a coordinated manner without unnecessary duplication of infrastructure or the same planning concerns about disjointed, unsafe and unsightly deployment. Critically this could also offer the possibility of a faster and more predictable deployment of 5G, in terms of approval and installation.

Strategic and local plans and planning legislation exist for a reason. Insufficient justification and evidence have been provided to support the assumption that a larger structures will mean that fewer structures overall will be built in the future. SSROC believes that some of these measures would have a significant and specific environmental impacts, and that as a general principle, any facility or activity which has an impact on local government structures, should be assessed by local councils. Whether the impact would be "minimal" or "minor" and what level of risk may be generated, can be assessed only on a case by case basis alongside an understanding of the collective impacts of multiple structures on public places.

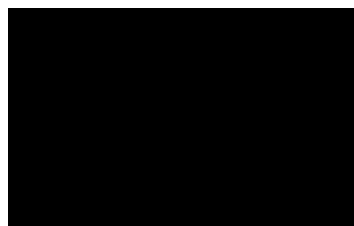
SSROC recommends that regulation via a Code of Conduct which is enforceable is the preferable method of ensuring carrier activities are monitored and adherence is enforced. It should not be assumed that community expectations are for more, larger infrastructure to increase their broadband speeds/capacity, at the expense of visual and community amenity.

SSROC acknowledges the guidance and information provided by AGLA, the City of Sydney and Next Energy in the preparation of this submission.

In order to make this submission within the timeframe for receiving comments, it has not been possible for it to be comprehensively reviewed by all SSROC councils or to be endorsed by a formal meeting of the SSROC Executive. I will contact you further if any issues arise as it is further reviewed. If you have any queries please do not hesitate to get in touch.

For any enquiries regarding this submission, please contact [REDACTED]

Yours faithfully,



Southern Sydney Regional Organisation of Councils