Phase One of the South Australian Planning and Design Code

Submission by the Department of Communications and the Arts

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Introduction

The Department of Communications and the Arts (the department) develops policy, advice and initiatives focused on helping Australians realise the full potential of arts and culture, and digital communications technologies and services. The department promotes the ready access to Australian arts and cultural content, and telecommunications infrastructure that underpins the widespread use of modern digital communication services.

As part of its telecommunications role, the department provides information to property developers on their telecommunications obligations in new developments. We also engage with state and territory governments on measures in their planning laws that can help ensure Australians have timely access to high-quality telecommunications services. In this capacity, the department has been following the progress of the South Australian planning reforms with interest, and welcomes the opportunity to comment on Phase One of the Planning and Design Code.

This submission briefly outlines the general obligations on developers under the Commonwealth’s Telecommunications in New Developments (TIND) policy, the applicability of the existing policy in rural and remote areas, and proposes that obligations on developers could be strengthened through the creation of specific telecommunications provisions in the South Australian Planning and Design Code.

1. Overview of the telecommunications infrastructure in new developments policy

Telecommunications is an essential utility, enabling wider social and economic inclusion. Due to its importance, fixed telecommunications services are made available to premises nationally, even in remote and rural areas. As such, people moving into new properties expect ready access to telecommunications services, and are frustrated if this is not the case. The Commonwealth helps to meet this expectation by ensuring there are providers available to supply infrastructure and services, however the process involves multiple parties working together. The provision of this infrastructure requires considerable planning, investment and time.

The Commonwealth’s arrangements for the supply of telecommunications in new property developments are set out in the Telecommunications Infrastructure in New Developments (TIND) policy, which took effect in March 2015. Under the policy, developers are responsible for ensuring the provision of telecommunications infrastructure, just as they are responsible for organising other essential utilities that may be required, like water, electricity, sewerage and gas. These requirements also include the provision of appropriate pit and pipe infrastructure (except in a limited number of circumstances), and contracting a carrier to service the development. A copy of the policy is available on the department’s website at https://www.communications.gov.au/policy/policy-listing/telecommunications-new-developments.

The TIND policy allows developers to choose between different telecommunications carriers in a competitive market. The Telecommunications in New Developments Map can help identify which carrier is servicing a particular new development, and may assist developers in finding carriers that operate in nearby estates. The map is available at https://www.communications.gov.au/what-we-do/internet/competition-broadband/telecommunications-new-developments-map.

If developers do not wish to choose or cannot find an alternative carrier, NBN Co and Telstra have responsibilities as infrastructure providers of last resort (IPOLRs). NBN Co is responsible for providing broadband infrastructure and services as it progressively rolls out its network nationally using fixed
line, fixed wireless and satellite technology. Telstra is responsible for providing voice services. In NBN Co’s fixed line footprint, Telstra uses NBN Co networks as it becomes available, whereas Telstra uses its own infrastructure in NBN Co’s fixed wireless and satellite areas.

Carriers will typically charge for the provision of telecommunications infrastructure, including the cost of backhaul to a carrier’s wider network if this infrastructure is not already available. NBN Co has set charges for new developments. Other carriers set their own commercial charges.

The TIND policy is supported by Part 20A of the *Telecommunications Act 1997* (the Act). Part 20A of the Act requires developers that are corporations under Commonwealth law to install fibre-ready pit and pipe infrastructure as part of their developments. The provisions support the installation of optical fibre cabling as well as copper cabling, primarily in urban and suburban areas. Developers are able to source the installation of pit and pipe from carriers themselves, or from independent contractors. Developers can face civil penalties for failing to adhere to these provisions.

2. Telecommunications for rural and remote developments

The provision of telecommunications services to new developments in rural and remote areas, which are usually located in NBN Co’s fixed wireless and satellite areas, tends to differ from developments located in metropolitan and regional centres.

Costs are typically higher due to their location and smaller numbers of lots, and there may not be alternative carriers willing to service certain rural or remote areas. This means that developers in these localities may have less choice in terms of infrastructure provision, and may instead need to rely on the IPOLR mechanisms in the TIND policy when contracting services.

Under the IPOLR arrangements, the working assumption is that all new developments with 100 or more lots or units, including in rural and remote areas, will fall within the long-term NBN fixed line footprint. However, NBN Co has flexibility to choose its broadband technology based on an assessment of cost-effectiveness, and may decide to service these developments with fixed wireless or satellite. Pending the rollout of the NBN in an area, Telstra remains the IPOLR for new developments of less than 100 lots or units for voice services. In NBN Co fixed wireless and satellite areas, Telstra also remains the IPOLR for voice services as per its Universal Service Obligation (USO).

Many developments in rural and remote areas will also be eligible for a standing exemption\(^1\) to the fibre-ready pit and pipe infrastructure requirements under Part 20A of the Act. This exemption recognises that certain types of developments in rural and remote areas have no need of pit and pipe, as they will be serviced by direct buried cable, wireless or satellite infrastructure.

To be eligible for this exemption, a development must meet the following four criteria:

- There will either be no network utilities, or only above-ground electricity lines will be installed, in proximity to building lot (i.e. the development is relatively remote and does not have mains water, sewerage or underground electricity),
- There is no kerb and channelling constructed, or planned to be constructed,
- The average length of the street frontages of the building lots within the development is 60 metres or more (i.e. the development is on a larger rural type block), and

\(^1\) Telecommunications (Fibre-ready Facilities— Exempt Real Estate Development Projects) Instrument 2016
- The development is not in a current or announced NBN fixed-line network rollout area.

There is also scope for developers to seek an individual exemption if they are not covered by the standing exemption and they consider it warranted.

3. Telecommunications in Phase One of the Planning and Design Code

While the Commonwealth’s arrangements for new developments seek to ensure that developers can find a carrier to ensure their developments will have access to broadband and voice services, the arrangements are dependent on all parties playing their role to be effective. We consider that appropriate planning requirements at the state and territory level can assist in this regard.

Planners and developers should engage with carriers early in the planning process, and set out their requirements for telecommunications infrastructure. Early engagement will help ensure telecommunications infrastructure has appropriate capacity, scope for expansion and extension, and that such infrastructure is available when required by occupants. Generally, carriers need a minimum of six months’ notice to be able to service an area by the required date. This will also avoid later retrofitting costs, delays and inconvenience. Early engagement can also foster greater co-ordination and efficiencies with the provision of other utilities, such as the use of shared trenching, where needed.

As outlined above, the Commonwealth has established measures to support telecommunications infrastructure provision in new developments. Most developers follow these arrangements, ensuring people moving into their development have ready access to modern telecommunications. However, while limited in number, there have been instances where developers, including in South Australia, have not followed the policy. This has left some new properties without access to fixed telecommunications services, and residents facing unexpected costs and delays to connections to voice and broadband services. While the majority of these cases have been in urban areas where most new development takes place, we are also aware of cases in rural and remote areas.

To prevent this, and to help clarify obligations on property developers, the department sees considerable benefit in the inclusion of explicit telecommunications arrangements in planning laws at the state and local government levels. Many of the issues relating to the deployment of telecommunications infrastructure are more effectively dealt with under state and local planning provisions, as property developers are more likely to be aware of, and engage with, these planning requirements on a regular basis. While acknowledging that each planning system is unique and has differing requirements, the department encourages the inclusion of appropriate guidance on the provision of telecommunications in all state and local planning arrangements.

In this regard, we note that a number of new telecommunications specific requirements, focussed on minimising the visual impact of telecommunications facilities, are proposed under the Planning and Design Code in the Outback.

The department recognises that planning laws should not be based on a one-size-fits-all model, but instead need to be appropriately tailored for the specific area or locality of the development. This is also true for the provision of telecommunications infrastructure and services. We also understand that Phase one of the Planning and Design Code is focused on land that is in the outback, or in areas outside of SA council areas. Large developments in these areas are uncommon, and smaller developments in such remote areas are unlikely to be serviced by fixed line telecommunications, particularly for broadband connections. As such, we would generally expect these areas to access telecommunications services via NBN wireless or satellite technologies.
However, it is still important for developers to know and understand their obligations in relation to provision of telecommunications infrastructure, which apply even in remote parts of Australia. To this end, the department proposes that additional information about telecommunications requirements be included on the SA planning portal website in the interim, and incorporated as part of the SA Planning and Design Code.

These requirements would have two main parts, and apply to all developers – whether they are incorporated or not.

First, the department would encourage the SA Government to consider new provisions that would require developers to contact carriers to determine how telecommunications would be provided to their developments in outback areas. If they could not find or did not want to use an alternative carrier, this would involve them contacting NBN Co and Telstra as the IPOLRs for broadband and voice respectively. This is an important first step as it enables the carriers to advise developers on how they would service the development, and if any charges would be involved. This is a relatively simple process. NBN Co can tell a developer which technology it will use to service a development, based on the initial information provided, when an online application is lodged. This application form can be found at: https://www.nbnco.com.au/develop-or-plan-with-the-nbn/new-developments/applications

Second, the department would encourage the SA Government to consider new provisions that would require developers, unless otherwise exempted, to provide fibre-ready pit and pipe to the relevant carrier’s specifications. This would generally be because the development is best served with fixed line infrastructure by either NBN Co (or Telstra, if it has ongoing responsibilities) because of the size of the development, or if the infrastructure is already deployed in the area. Given telecommunications can be provided in different ways for a range of reasons, a carrier should advise if pit and pipe is required or not. As noted above, to be eligible for the standing exemption, it is necessary to know that a development will be serviced by NBN Co fixed wireless or satellite.

While we consider such generic requirements are important, we consider it equally important that planning requirements not specify particular technology-based telecommunications solutions like a fixed line or fixed wireless. Technology-specific planning requirements could place unreasonable costs on developers because no carrier will provide that technology at a cost-effective price. To illustrate this point, we have come across situations where it is clear a development is best serviced by fixed wireless, but the developer has been faced with the cost of a direct-buried wireline solution because of local council requirements. In short, planning requirements are needed but need to be appropriate and flexible when it comes to technology.

We consider the SA Department of Planning, Transport and Infrastructure is best placed to articulate how these requirements could be incorporated into the planning scheme. We would be happy to work with the South Australian government and other stakeholders on optimal wording that reflects industry best practice and provides appropriate flexibility. Possible approaches could be based on the models adopted by Victoria (namely Victoria Planning Provision 66-01.1²) or NSW (Planning Circular 17.005³).

Many developments in outback SA will meet the criteria that would exempt them from the Part 20A requirements, as discussed above. However, developers may need to be made aware that this process is not automatic and a formal notification is required. This notification process can be completed

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It is also worth highlighting that pit and pipe requirements will still have effect for new developments that fall outside of the NBN fixed line footprint, but do not meet the other three exemption criteria noted in section 2 above. Developers can seek individual exemptions if they consider them warranted in such circumstances.

4. Future Engagement

We recognise that the scale of new development in outback SA may be limited, and the issues we are raising are likely to be more significant in urban areas of SA.

As the Planning and Design Code continues to be developed over the coming years, the department would welcome the opportunity to work more closely with the SA Department of Planning, Transport and Infrastructure on options for ensuring buyers of premises in new developments have access to high-quality telecommunications.

The department would welcome early discussions on ways for SA planning requirements to work with the TIND policy to ensure good telecommunications outcomes for South Australians as part of the broader reform of the planning system.