Dear Commissioner

Re: Productive Economy Policy Discussion Paper – MCF Response

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, Vodafone Hutchison Australia, and TPG, being the four mobile carriers with mobile network facilities in Australia.

Our members have a keen interest in the regulatory and planning frameworks within which they deploy their networks as these have a material impact on the efficiency and timeliness of bringing the significant benefits of mobile telecommunications to the businesses and communities of Australia.

In October 2018, the MCF made a substantial submission to the State Planning Commission to assist the South Australian government implement an efficient and effective planning framework for the future deployment of this essential infrastructure. The submission, amongst other things, considered the existing BDP policy modules for Infrastructure and Telecommunications Facilities (see section 6) and devised a single Infrastructure policy module which sought to formalise the essential nature of telecommunications as is already the case for other types of infrastructure and dispense with separate controls for telecommunications.

An abridged (and slightly updated) version of that submission is attached (now identified as February 2019) - the suggested Infrastructure module can be found in Annexure A.

The submission concluded that the planning reforms currently underway should make a range of changes which include:

- Inclusion of telecommunications infrastructure as essential infrastructure, in line with repeated Court findings;
- Incorporate all telecommunication facilities policy provisions into the ‘Infrastructure’ module (with appropriate wording and additions), dispensing completely with the separate telecommunications facilities module currently in use;
• Ensure that the definition of ‘telecommunications facility’ is specifically defined and tied to the provisions for essential infrastructure in the nature of ‘communications infrastructure’, and that term be aligned with the Commonwealth ‘telecommunications facility’ definition in the Telecommunications Act 1997 (Cth).

• Introducing a range of exempt, complying, accepted and deemed to satisfy complying development for telecommunications facilities, subject to certain performance and siting criteria. This might include a combination of facility height, zoning and the type of facility – akin to provisions for other forms of infrastructure such as railways;

• Ensuring there are no zones or areas (including character preservation areas or other special legislative schemes) where telecommunications facilities are excluded absolutely by way of being restricted, non-complying, prohibited or similar;

• Ensuring that no Overlays adversely impact on the development of any essential infrastructure, including telecommunications facilities;

• Ensure there are no proximity-related policies which unnecessarily restrict or constrain the placement of telecommunications facilities (such as arbitrary buffer zones as occur in City of Port Adelaide Enfield which have effectively precluded deployment in the past) to ensure the community can be adequately served; and

• Removal of Councils as the relevant planning authority (for most applications) and have all applications assessed by the State Commission to ensure consistency in approach.

The MCF’s members have, over the last two decades or so, had extensive experience in deploying network infrastructure in South Australia, which has (at times) included the need for judicial decision making. It is through the many decisions of the Courts that clarification and interpretation of ‘telecommunication facilities’ has been framed, allowing effective and timely delivery of services and the recognition of such services as ‘essential’.

Effective and timely delivery of services are critical imperatives to ensure State-wide access to reliable and high-quality telecommunications service, which are important for business and the State to ensure competitiveness and to foster hi-tech industries. Meeting ever-increasing demand for wireless telecommunications services and providing widespread and reliable access to telecommunications across Adelaide and South Australia will be a key part of achieving economic and social outcomes desired by the State.

When the MCF made its initial submission to government in October 2018, the Productive Economy Policy Discussion Paper (‘the discussion paper’) had not been released. Further to the content of the MCF submission attached (and the additional information contained in the original October 2018 submission), the MCF specifically raises the following for consideration in respect of the discussion paper.

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1 As per the meaning contained in s104 of the Planning, Development and Infrastructure Act 2016
2 As per the meaning contained in s106 of the Planning, Development and Infrastructure Act 2016
3 As per the meaning contained in s110 of the Planning, Development and Infrastructure Act 2016
Background

The MCF understands the Productive Economy Policy Discussion Paper forms a suite of discussion papers intended to inform the policy direction for the South Australian Planning and Design Code (‘the Code’). Upon the MCF’s reading of the discussion paper there is a strong and unequivocal focus on the many areas contributing to a strong and diversified South Australian economy both now and into the future.

As set out in section 3 of the attached MCF submission, the economic impact of telecommunications in today’s modern economy cannot be disputed or ignored. The on-going evolution of services, which at the moment are focussed around the roll-out of 5G, requires a nimble and responsive policy regime that recognises the essential nature of mobile telecommunications infrastructure and the on-going improvements to technology which allow new ways for services to be delivered.

The discussion paper states:

“We are aware the Code presents us with the opportunity to streamline areas where our current policies aren’t quite up to scratch – where there may be conflict, duplication or deficiencies - and to develop new policies where gaps exist.”

Although the Courts have, over many years, treated mobile telecommunications as essential forms of infrastructure, the importance of using this opportunity to formalise that as the State’s position and consolidate all essential infrastructure policy into a single module (i.e. remove the separate telecommunications module) should not be understated. The MCF is of the view this is exactly the opportunity described by the discussion paper set out above.

The MCF is also of the firm view the policy settings to allow for the approval and deployment of telecommunications infrastructure need to be carefully considered to ensure efficient, economical and timely deployment and in particular draw on the nearly two decades of experience and learnings under the current policy regime. The MCF is also keen to ensure, with all the resources expended over the last two decades, that any new policy doesn’t introduce retrograde steps (either intentionally or unintentionally) or create confusion about the important role mobile telecommunications plays in a modern, creative and productive economy – and the need for timely, non-cumbersome approval processes to expedite deployment.

Comments on the Discussion Paper

One of the central tenets of the discussion paper is that of the provision of the necessary infrastructure to enable the continuing growth and diversification of the South Australian economy and allow it to attract and take advantage of new opportunities and emerging technologies. Increasing urbanisation of the population also drives the need for additional infrastructure.

It’s also necessary to recognise the key role mobile telecommunications play in the international education and tourism sectors – two incredibly important sectors for the future of the South Australian economy - as well as most of the others listed in the discussion paper including defence industries, health and medical, knowledge and creative industries and professional and IT services.

Mobile telecommunications are also extremely important to regional South Australia and good access to a similar level of service to that experienced by the metropolitan population is critical if the regions are to stay competitive and connected, despite shrinking populations.

The discussion paper recognises:
“Evolving technology and communications continue to change the way business is conducted, how we live our lives, and how our urban and regional environments are shaped.”

It goes on to touch briefly on ‘Smart Cities’ where it is noted “the emphasis is on the integration of public infrastructure, data technology and the internet to improve the quality of life for people living, visiting and working in the area.”

The MCF agrees entirely with these observations, but stresses none can reach their highest potential unless the economic importance of mobile telecommunications infrastructure is fully recognised in the State’s planning policy. This has not been well recognised in the past through the allowance of very restrictive policies in some zones (particularly the non-complying designator) which have denied entire communities’ levels of services and data speeds being experienced in most other places and created other network problems such as congestion.

With the globalisation of the world’s economy, changes in work practices (particularly working from home, hot-desking and working ‘out of the office’ generally) reliable and ubiquitous access to high-quality telecommunications and data services is essential. However, such access is only available where the necessary infrastructure can be deployed. This must, by definition, include areas where more sensitive uses are present such as residential areas and areas with heritage values.

It would be difficult to imagine a world without mobile telecommunications and the ability for that network to continue to grow as necessary to serve the ever-growing demand. However, the discussion paper is, noticeably, almost silent in anticipating workable policies to meet mobile telephony need and expectations. The discussion paper instead places a greater focus on more traditional infrastructure such as power, water and gas and it does not envisage a policy scheme by which mobile telecommunications infrastructure can be deployed without undue difficulty, delay or expense. In essence, the discussion paper touches on many of the important issues but demurs on exploring the ‘how’ part of that equation.

The Infrastructure discussion on page 39 of the discussion paper in particular highlights the focus on traditional infrastructure (particularly underground) without considering the different needs of wireless technologies and mobile telecommunications and how they can be accommodated through enabling policy.

As was set out in detail in sections 2 and 4 of the attached MCF submission, the history of telecommunications in South Australia – particularly since 1997 – has been one of both evolution and revolution. Prior to 1997 the State had no role to play in controlling telecommunications and between 1997 and 2000 there was a policy dearth. In 2000, a State-Wide Ministerial amendment to all Development Plans sought to bring some order to the chaos, which recognised in its commentary that such infrastructure was “essential” and through policy levers encouraged the carriers into less sensitive zones by making approvals less difficult.

To provide support to the experiences of the carriers and argument for change advanced in this document, a comprehensive summary of 40 Court cases and the outcomes and impacts has also been undertaken (and was included in the MCF’s full submission in October 2018), showing a clear and settled pattern by the Courts. For example, the review revealed no third party appeals/opposition have succeeded.

The submission concludes that the current policy regime, which has been tried and tested many times over the last 18 years (since the Ministerial changes implemented in 2000), is well understood in terms of its application, and also its obvious limitations - where it adds no value at all to the process.
As such, more than sufficient knowledge exists for policy surrounding mobile telecommunications to fall into the ‘transition ready’ category and the MCF submission attached contains a consolidated Infrastructure Module which could readily be implemented in the first version of the Code.

The MCF is also in the process of reviewing the draft *Planning, Development and Infrastructure (General) (Development Assessment) Variation Regulations 2019* and will make a separate submission on those. However, as part of the that review (and various parts of the *Planning, Development, Infrastructure Act 2016*) it does appear ‘communications networks’ will be included in the definition of ‘essential infrastructure’⁴ which would then allow a planning assessment process through the State Planning Commission.⁵

However, what has also become apparent in a review of the new legislative framework proposed, is that there is no specific definition for a ‘telecommunications facility’ as had previously appeared in Schedule 9 of the *Development Regulations 2018* - appropriately tied itself to the Commonwealth definition. On the MCF’s reading, the definition of ‘telecommunications facility’ has not survived the transition to new legislation and regulation, a fact that may give rise to future uncertainty, expense and confusion. This is of great concern.

To that end, a consistent definition should be included under ‘essential infrastructure’ to specifically recognise and define telecommunication facilities, as this would be consistent with the existing *Development Regulations*, with the definition used by relevant authorities and by the Courts. It is also noted the term ‘telecommunication facilities’ is used (but not defined) in the draft Regulations under Schedule 4(3)4. This inclusion is welcomed, as it is a carry-over of the former requested amendment for leasing provisions in the *Development Regulations*.

A clear, unambiguous definition is necessary to ensure all of the policy approaches suggested by the MCF can be properly implemented. The MCF respectfully suggests the term ‘telecommunication facility’ is used and has the same meaning as the *Telecommunications Act 1997 (Cth)*.

**Suggested Changes to Policy**

The MCF submission contained a number of considered suggestions on specific types of telecommunications infrastructure that would be considered ‘exempt’ or ‘complying’ either by regulation or in the Code itself – such provisions, if adopted, would be consistent with legislation provisions extant in other States. The full list of suggestions is contained in Annexure B of the attached MCF submission and includes:

**Exempt Facilities**

- Replacement of a tower or facility associated with a tower to enable collocation
- Extension of a tower or facility to enable collocation

**Complying Facilities**

- New monopoles up to 25 metres in height where located in a centre, commercial or like zone and more than 25 metres from a residential zone
- New monopoles up to 40 metres in height where located in an industrial or rural zone and more than 50 metres from a residential zone

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⁴ As set out in s3 of the *Planning, Infrastructure and Development Act 2016*
⁵ As set down in s130 of the *Planning, Infrastructure and Development Act 2016*
➢ New monopoles and towers up to 50 metres in height where located in a rural zone and more than 100 metres from a residential zone

Insertion of these provisions would be consistent with such themes in the discussion paper as:

- Improved controls to manage external impacts
- Zoning models that support mixed use and diversification of business and industry
- Planning controls that support emerging business practices and technology

In relation to the theme of creating and reinforcing opportunities and innovations, the discussion paper notes:

“It is also vital that urban infrastructure is provided in an intelligent way to support our economy. This applies to infrastructure in its broadest sense, embracing, for example, inclusive and liveable communities, 20-minute neighbourhoods, quality public realm in activity centres and employment districts and access to transport, water, energy and communications services.”

The MCF agrees entirely with this sentiment and in this context it is very important to remember that mobile telecommunications is infrastructure provided exclusively by the private sector and needs to occur with regard to an existing network. It cannot be provided by developers or government and only the carrier can know how to provide sufficient coverage and network capacity, limit interference and deduce where the next round of improvements will need to focus. Such decisions are driven primarily by demand presented, which is directly linked to the way people work, land use and zoning.

Despite being provided by the private sector, mobile telecommunications is very much public infrastructure and should therefore enjoy a very similar if not identical policy regime to other forms of more traditional public infrastructure.

Further, the Commonwealth controls the paramount telecommunications legislation in Australia and the carriers deploy infrastructure in South Australia as a result of the Commonwealth regime and associated carrier licences. To that end, the State should deliver planning policy that strives to achieves the objects and objectives of the Commonwealth regime to ensure deployment processes are streamlined, ensuring continuation of investment in this infrastructure continues and efficient and timely service delivery.

The recurring theme of need for efficient and timely service delivery and how best to address it feeds directly into other matters raised in the discussion paper which are inherently linked to or will rely on reliable access to mobile telecommunications including:

- The need for timely, coordinated provision of infrastructure and services in line with staged growth plans and planning policies.
- Theme 2 – linking people to jobs, goods and services
- Home-based businesses
- Theme 3 – providing infrastructure to enhance our liveability
- Strategic, structural and follower infrastructure – mobile telecommunications falls into all three of these categories
- Infrastructure schemes – how is mobile telecommunications provided?
- Theme 4 – facilitating innovation and enabling investment, which recognises many businesses will have a high level of technological or knowledge transfer between them
• Innovation Precinct Criteria – in particular the need for appropriate utilities and ICT infrastructure
• E-commerce and the sharing economy

In terms of the South Australian Planning Policy Library (SAPPL), the approach taken in the attached MCF submission (and in particular the policy module contained in Annexure A and the list of suggested exempt and complying activities in Annexure B) is consistent with:

➢ **Removal of superfluous development controls**, as almost two decades of experience with the previous policy and dozens of Court judgements make this a straightforward exercise
➢ **Fit for purpose controls** where the need for infrastructure strikes a better balance with zoning
➢ **Clear categorisation of infrastructure projects as ‘strategic’, ‘structural’ and ‘follower’** where mobile telecommunications falls into all three categories over time
➢ **Zones and regulatory provisions that respond to the needs of identified innovation precincts**
➢ **Flexible regulations to support innovation across all relevant zones, provided significant negative externalities are avoided**

**Conclusion**

The discussion paper recognises the need for infrastructure and its vital role in enhancing liveability, as well as its contribution to the economy. However, the MCF is of the view that the discussion paper fails to sufficiently recognise the key role telecommunications plays and even less the unique challenges faced by the carriers in deploying the necessary infrastructure. The paper should be enunciating the State’s position that mobile telecommunications is essential infrastructure and like electricity, water, rail and gas, needs a policy regime that balances the important need for that infrastructure with the community’s expectations and demands. The existing policy regime is too onerous, cumbersome and inefficient and much has been learnt over the last two decades in this regard.

As such, it is vital that a workable, long-term policy regime specifically for mobile telecommunications (and infrastructure more generally) is included in the first iteration of the Code. This is important for business, tourism, education and the community generally, as the demand for services and data in particular continues to grow. It will also ensure the State is well placed for rollout of 5G services in the near-future, which have the potential to revolutionise the way telecommunications are delivered and used.

Based on the knowledge already gathered (and comprehensively set out in the attached MCF submission), it is the MCF’s view that ‘transition ready’ policy can be devised and implemented without a disproportionate effort. Indeed, the Infrastructure Policy module suggested by the MCF (the reasoning of which is carefully set out in section 6 of the submission) is a convenient starting point, combined with thought around appropriate zoning provisions and the removal of non-complying (or similar) designators.

As always, the MCF welcomes engagement with government on these important issues and encourages careful consideration of the submission made to the State Commission in October 2018, which meticulously sets out all of the relevant issues and provides a clear pathway forward. The Code is a great opportunity to get this important policy regime right to ensure South Australia and its communities have access to the latest and most reliable mobile telecommunications networks available.
Please don’t hesitate to contact me further should you have any immediate questions and please advise when the MCF might present to the Commission to further these important issues and ensure the new planning system responds appropriately.

Yours sincerely,

[Signature]

**Ray McKenzie**  
Manager, Mobile Carriers Forum  
Australian Mobile Telecommunications Association
TELECOMMUNICATIONS AND THE PLANNING SYSTEM

SOUTH AUSTRALIAN PLANNING REFORMS

Mobile Carriers Forum
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ABRIDGED VERSION
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## ANNEXURES

- **Annexure A**  Infrastructure Policy Module
- **Annexure B**  List of Suggested Exempt/Complying Development
EXECUTIVE SUMMARY

This submission by the Mobile Carriers Forum (MCF) is in response to the current planning reforms being undertaken by the South Australia Government and the Department of Planning, Transport and Infrastructure. These changes will result in a number of State Planning Policies and a Planning and Design Code, which will guide development and its assessment across South Australia.

The MCF is of the firm view the policy settings to allow for the approval and deployment of telecommunications infrastructure need to be carefully considered to ensure efficient, economical and timely deployment and in particular draw on the nearly two decades of experience and learnings under the current policy regime. The MCF is also keen to ensure, with all the resources expended over the last two decades, that any new policy doesn’t introduce retrograde steps (either intentionally or unintentionally) or create confusion about the important role telecommunications needs to have in a modern, creative and vibrant economy.

The submission sets out the background and lessons learnt over the journey the telecommunications industry – along with local government and the community – has taken through the planning system since 1997, how community attitudes have shifted and the need for the development of more infrastructure in the future to support the growing demand. Meeting this demand and providing widespread and reliable access to telecommunications across Adelaide and South Australia will be a key part of achieving economic and social outcomes desired by the State.

The submission details:

- Who the MCF is and its interest in influencing policy in this area;
- The purpose of the submission with reference to the State’s The Blueprint for South Australia’s Planning and Design Code and upcoming draft State Planning Policies;
- Background to the regulatory regime at State and Commonwealth level, changes to which drove the current policy regime;
- The economics of telecommunications and its importance to economic growth and productivity;
- The practical experience of the current policy regime, including the treatment of other forms of infrastructure such as electricity, gas and sewer;
- A review of existing Development Plan policy; and
- Legislative responses in other State jurisdictions.
To provide support to the experiences of the carriers and argument for change advanced in this document, a comprehensive summary of 40 Court cases and the outcomes and impacts has also been undertaken, showing a clear and settled pattern by the Courts.

The submission concludes the current policy regime, which has been tried and tested many times over the last 18 years (since the Ministerial changes implemented in 2000), is well understood in terms of its application but also its limitations and where it adds no value at all to the process.

It is concluded that the planning reforms currently underway should make a range of changes which include:

- Inclusion of telecommunications infrastructure as essential infrastructure, in line with repeated Court findings;

- Incorporate all telecommunication facilities policy provisions into the ‘Infrastructure’ module (with appropriate wording and additions), dispensing completely with the separate telecommunications facilities module currently in use;

- Ensure that the definition of ‘telecommunications facility’ is specifically defined and tied to the provisions for essential infrastructure in the nature of ‘communications infrastructure’, and that term be aligned with the Commonwealth ‘telecommunications facility’ definition in the *Telecommunications Act 1997 (Cth).*

- Introducing a range of exempt, complying, accepted and deemed to satisfy complying development for telecommunications facilities, subject to certain performance and siting criteria. This might include a combination of facility height, zoning and the type of facility – akin to provisions for other forms of infrastructure such as railways;

- Ensuring there are no zones or areas (including character preservation areas or other special legislative schemes) where telecommunications facilities are excluded absolutely by way of being restricted, non-complying, prohibited or similar;

- Ensuring that no Overlays adversely impact on the development of any essential infrastructure, including telecommunications facilities;

- Ensure there are no proximity-related policies which unnecessarily restrict or constrain the placement of telecommunications facilities (such as arbitrary buffer

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1 As per the meaning contained in s104 of the *Planning, Development and Infrastructure Act 2016*

2 As per the meaning contained in s106 of the *Planning, Development and Infrastructure Act 2016*

3 As per the meaning contained in s110 of the *Planning, Development and Infrastructure Act 2016*
zones as occur in City of Port Adelaide Enfield which have effectively precluded deployment in the past) to ensure the community can be adequately served; and

- Removal of Councils as the relevant planning authority (for most applications) and have all applications assessed by the State Commission to ensure consistency in approach.

This submission is intended to provide a comprehensive snapshot to Government of nearly two decades of experience in this policy space, how it has been practically applied and how the Courts have played a key role in the interpretation of policy set by the Minister in 2000 and applied in a blanket fashion across the State.

This submission is also intended to lead into further discussion with Government that can occur against the background of a solid briefing on the last 20 years or so. It is hoped this will create open and clear lines of communication and dialogue with the industry to ensure technical and practical matters are well understood and any policy changes can be properly considered and unintended consequences are minimised or eliminated altogether.

Following its submission, it is anticipated a ‘workshop’ or similar forum can be held with the Department to collaboratively devise a workable policy position that feeds into both the relevant State Planning Policy module and the necessary operative parts of the Planning and Design Code.
1. 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, Vodafone Hutchison Australia, and TPG, being the four mobile carriers currently deploying mobile network facilities in Australia.

Our members have a keen interest in the regulatory and planning frameworks within which they deploy their networks as these have a material impact on the efficiency and timeliness of bringing the significant benefits of mobile telecommunications to the businesses and communities of Australia. Accordingly, the MCF wishes to provide a submission to assist the South Australian government implement an efficient and effective planning framework for the future deployment of this essential infrastructure.

Purpose of the Submission

The South Australian planning reforms are the biggest changes to the way planning, development and policy is handled in South Australia for a generation. Much has been learnt over the 25 years since the introduction of the Development Act 1993 and no more so than in the telecommunications industry, where until 1997 the State had virtually no input or control at all.

Since the first telecommunication policy was introduced State-wide by the Minister in 2000, the telecommunications carriers, local government and the community generally have been forced to rely on that policy and its interpretation by various Courts. Dozens of hearings have occurred over the last 20 years or so and there have been many more appeals, most of which have been either withdrawn or resulted in consensus.

As a result, there is now a number of key judgments from the Courts that have helped guide site selection and design and narrow the planning issues, with the approach to assessment and determination generally understood by most Councils.

However, during that time, millions of dollars have been spent, deployment of infrastructure has been delayed and there have been no significant ‘wins’ by Councils and all third party appeals that reach hearing stage have been dismissed.

The industry, councils and the community have tried to understand what the drafters of the 2000 amendments meant to say while at the same time demand for services continues to grow. Over time there has also been a growing, sometimes tacit, acknowledgement by many that telecommunications is essential infrastructure in a modern society and it “needs to go somewhere”, albeit this is usually a position taken by those who are not directly affected by the infrastructure.

Whilst there is a long way to go with the planning reform process, the State is unlikely to prioritise telecommunications in its policy decisions and to that end the MCF has decided to make this submission to ensure proper regard is had for the lessons learnt over the last 20 years, and to ensure no retrograde steps are taken, however inadvertent, that force the
industry, councils and the community to go back over old ground to test new policy wordings (or Constitutional validity).

Based on information already released about the planning reform process through The Blueprint for South Australia’s Planning and Design Code, one of the proposed Policy Discussion Papers is focussed on a ‘Productive Economy’ which includes the key focus areas of ‘smart cities’ and ‘infrastructure’ into which telecommunications squarely falls and it will be of critical importance that the State Planning Policy consider the policy required to allow for the delivery of a productive economy.

The Blueprint document also talks briefly about ‘Challenges and Opportunities for the Future’, which identifies the issue of ‘Encouraging Smart Cities and Technology’ and makes an oblique reference to access to the NBN but no mention of mobile telecommunications which will be vital in achieving a ‘Smart City’ outcome.

Telecommunications, particularly mobile telecommunications, are essential and vital infrastructure in a modern society that, amongst other things, allows for the more efficient undertaking of business and improvements in productivity, flexibility and work-life balances. A logical, balanced approach to the selection of suitable locations and the deployment of infrastructure is necessary if the aspirations of the new planning system is to be realised.

Infrastructure associated with mobile telecommunications is often controversial, but great strides have been made over the past two decades to allow the industry, councils and the community to understand how the system needs to work to ensure the community at large has good, reliable access to telecommunications services.

This submission sets out the lessons learnt over the journey the telecommunications industry – along with local government and the community – has taken through the planning system since 1997; how community attitudes have shifted, and the need for the development of ever more infrastructure in the future to support the exponential increase in demand.
2. BACKGROUND

The power to regulate and control telecommunications in Australia is vested in the Commonwealth through Section 51 of the Australian Constitution and until 1997 such control was left exclusively to the Commonwealth. Telstra was the only significant player both with respect to infrastructure and customers and had been borne out of the fully Government-owned Telecom.

In 1991, the *Telecommunications Act 1991*, introduced the first real competition into the Australian market and allowed for the establishment of three digital (GSM) networks within Australia. Licences were granted to Telstra, Optus and Vodafone. Telstra was already operating an analogue network with Optus also re-selling those services.

In 1993, all three carriers earnestly began their GSM rollouts and were aided by a range of exemptions and coercive powers afforded by the Commonwealth. This allowed the carriers to establish a network without the need for State approvals and included the construction of structures such as monopoles and lattice towers.

In 1997, the market was fully de-regulated and the *Telecommunications Act 1997* came into force. This allowed other carriers and service providers to become established and operate, including rolling out their own infrastructure.

At the same time, the Commonwealth limited the exemptions and powers available to the carriers and permitted only ‘low-impact facilities’ to be deployed without State approval. These exemptions were enshrined in the *Telecommunications (Low-Impact Facilities) Determination 1997* (the Determination), which was amended in 1999 and 2018. The Determination deals primarily with the mounting of antennas on existing buildings and structures, as well as collocation and the placement of ground-based equipment. The Determination sets out in a schedule the physical and locational characteristics which must be complied with to enable a carrier to deem a facility ‘low impact’.

However, this approach left a gap in the system as States had never had to regulate telecommunications nor provide any policy for its deployment. As such, any infrastructure that was not ‘low-impact’ was subject to the planning regime of the State in which it was proposed.

After several years of having no specific policy, the South Australian Government introduced a state-wide change to planning policy in August 2000 that affected all Councils. It introduced the concept of ‘preferred’ zones (typically non-residential zones) and also made changes to the *Development Regulations 1993* which categorised telecommunications facilities as category 1 or 2 in certain zones and circumstances. The State did not seek to introduce a definition for telecommunications but instead relied on it having the same meaning in South Australia as it does in the Commonwealth *Telecommunications Act 1997*. 
The ‘Better Development Plan’ program introduced a policy library which contained a telecommunications module, although some Development Plans had already made some changes to the original 2000 wording.

Since 2000, these provisions have been tested in the Court at various times and for various purposes, with the carriers often faced with the refusal of development applications on the grounds of visual impact (particularly with respect to residential amenity) and the contention that there must be a better location at which to locate the infrastructure – the “put it somewhere else” argument – i.e., the NIMBY or ‘not in my back yard’ attitude.

Since 1998, the Environment, Resources and Development Court (ERD Court, or its predecessor Tribunal) has determined at least 27 appeals, with most resulting in approval for the telecommunications facility. The Supreme Court has considered at least 7 matters and found in favour of the Carrier on all occasions except one, a decision which was then overturned by the High Court.

To that end, although some members of the community are concerned when a facility is proposed near them, the current regulatory regime in South Australia is now well established and understood by both the industry and local government and, to a lesser extent, the community. The ERD Court has also become quite fixed in its view on the approach to assessment and has consistently been so for at least the last decade. The Court’s now firmly accept that telecommunications facilities are essential infrastructure, needing to be developed as necessary in pursuit of the aims dictated in the Commonwealth Telecommunications Act. The Commonwealth Constitution provides that Commonwealth laws are paramount (section 109), and to the extent that any State Law conflicts with the Commonwealth Telecommunications Act for the development of telecommunications facilities, the State law is invalid, and offending State clauses are severable.

With the need for infrastructure on-going, both through increases in demand and population growth (particularly in newly-established residential areas), it is important that any new regulatory regime continues to recognise and reinforce the essential nature of telecommunications and its associated infrastructure. As well as the clear economic benefits to the State and businesses large and small, it is also important to recognise the significant social utility of a well-connected society.
3. ECONOMICS OF TELECOMMUNICATIONS

Mobile broadband continues to play a key role in stimulating Australia’s economic growth and productivity. It is a driving force in connecting people and businesses, stimulating innovation and technological progress, and transforming industries. Future development of mobile and fixed wireless technologies, such as 5G, the Internet of Things (IoT) and Machine to Machine (M2M) applications will re-shape the Australian economy and drive productivity improvements.

There are currently over 32 million mobile subscriptions active in Australia, representing a penetration rate of over 130%. This is a technology that Australians have not only taken to heart but which they recognise provide real benefits in terms of convenience, efficiency and security. The benefits are both social in terms of connectedness, and economic in terms of increased productivity for businesses and the workforce.


Recent research by Deloitte Access Economics found that mobile telecommunications creates significant benefits in terms of productivity and workforce participation.4

Specifically, the research showed that Australia’s economy was $42.9 billion (2.6% of GDP) bigger in 2015 than it would otherwise have been because of the benefits generated by mobile technology take-up with an increase in:

- long term productivity of $34 billion or 2% of GDP); and

• workforce participation of $8.9 billion, or 0.6% of GDP).\textsuperscript{5}

From: Deloitte Access Economics, Mobile Nation: Driving workforce participation and productivity, 2016\textsuperscript{1}

\textsuperscript{5} Ibid
The research also found that 65,000 full-time equivalent jobs were supported by the increased GDP attributable to workforce participation (equivalent to 1% of total employment in the Australian economy).\textsuperscript{6}

Consequently, it is evident that mobile network infrastructure is not only a key element of essential infrastructure for the nation but also for the state of South Australia which would share proportionally the significant benefits outlined above.

To that end, a suitable, efficient and workable legislative regime for approvals and deployment is essential to ensure the South Australian economy remains competitive and attractive to business and investment.

\textsuperscript{6} Ibid
4. THE SOUTH AUSTRALIAN PLANNING EXPERIENCE

As is the case in all other States and Territories, the South Australian planning system was not required to deal with telecommunications facilities as these were the domain of the Commonwealth until the deregulation of the industry in July 1997.

Between 1993 and 1997, Telstra, Optus and Vodafone rolled out their initial digital networks, commonly referred to as GSM or ‘2G’. The infrastructure required for these networks, which were much smaller in geographic areas and needed fewer base stations due to the low number of users, were deployed under a Commonwealth regime which not only required no State planning approvals, it allowed for the construction of monopoles and other infrastructure which would now need approval.

In July 1997, the industry was de-regulated and the Commonwealth only allowed for the deployment of ‘low-impact facilities’, the details of which were set out in a legislative instrument. This meant that any non-low impact facilities would be subject to the State regime and would almost certainly require planning approval.

As this coincided with the deregulation of the industry, there was also a flurry of activity from new players such as One.Tel, Hutchison and AAPT. However, the key problem was there had been no previous policy for telecommunications (as there had been no reason to) and as such the planning system was ill-equipped to deal with applications. It provided no guidance as to the preferred zones in which such facilities should be placed nor did it provide any general or specific policy against which to assess them. The result was chaotic and with no reference to such facilities in the Development Plan, Act or Regulations, most applications were deemed category 3 for the purposes of public notification and caused a great deal of angst and concern in the community.

There were also problems caused by having no standard definition for a telecommunications facility. The term ‘transmitting station’ already existed in the non-complying list of a large number of Development Plans. Case’s subsequently brought before the Court’s determined that ‘transmitting station’ did indeed cover mobile phone base stations, which instantly and dramatically increased the area covered by this non-complying term.

During this planning policy vacuum, a number of Councils introduced separate policy documents (all along similar lines) to try and put some rules around what carriers would need to demonstrate and provide in order for applications to be processed. As well as a generally poor understanding of technical requirements, the policy documents had no statutory standing and although they were used from time to time as part of a refusal, they were not part of the Development Plan. Many of those policy documents still exist and have been updated from time to time but are now generally used to help Councils make decisions about proposals by carriers on Council-owned land (i.e. from a property perspective).
In 2000, a State wide Ministerial amendment (‘PAR’) introduced standardised policy (primarily at a Council-wide level) to all local government areas, which inserted the following Objectives and guiding commentary:

Telecommunications Facilities

Objective 30: Telecommunications facilities provided to meet the needs of the community.

Objective 31: Telecommunications facilities located and designed to minimise visual impact on the amenity of the local environment.

Telecommunications facilities are an essential infrastructure required to meet the rapidly increasing community demand for communications technologies. To meet this demand there will be a need for new telecommunications facilities to be constructed.

The Commonwealth Telecommunications Act 1997 is pre-eminent in relation to telecommunications facilities. The Telecommunications (Low-impact Facilities) Determination 1997 identifies a range of facilities that are exempt from State planning legislation. The development of low impact facilities to achieve necessary coverage is encouraged in all circumstances where possible to minimise visual impacts on local environments.

Where required, the construction of new facilities is encouraged in preferred industrial and commercial and appropriate non-residential zones. Recognising that new facility development will be unavoidable in more sensitive areas in order to achieve coverage for users of communications technologies, facility design and location in such circumstances must ensure visual impacts on the amenity of local environments are minimised.

Importantly, this policy and commentary recognised the need to provided telecommunications facilities to meet the needs of the community whilst acknowledging that there will be detrimental impacts on amenity. The commentary went further to identify industrial and commercial zones as preferred for the siting of such facilities but there would also be an unavoidable need on occasion to site facilities in more sensitive areas such as residential zones.

The changes also affected Schedule 9 of the Development Regulations 1993 which allowed telecommunications facilities to be classified as category 1 or 2 in some zones up to a certain height (ranging from 30-40 metres) and also amended numerous non-complying lists to allow ‘transmitting stations’ to be a consent use up to 30 metres in height.

There were also some minor changes to Schedule 3 Acts and Activities that are not Development, of the Development Regulations 1993 to further clarify some provisions being applied to telecommunications that were previously not designed to be used in that way. However, these changes and provisions in Schedule 3 Part 12 Aerials, towers etc, have proven over time to be limited in usefulness and practical application.

Accompanying the Ministerial PAR Objectives and commentary were the following Principles of Development Control, which set out to give practical effect to the Objectives, along with some performance criteria for siting and design.
Telecommunications facilities should:

(a) be located and designed to meet the communication needs of the community;
(b) utilise materials and finishes that minimise visual impact;
(c) have antennae located as close as practical to the support structure;
(d) primarily be located in industrial, commercial, business, office, centre, and rural zones;
(e) incorporate landscaping to screen the development, in particular equipment shelters and huts; and
(f) be designed and sited to minimise the visual impact on the character and amenity of the local environment, in particular visually prominent areas, main focal points or significant vistas.

Where technically feasible, co-location of telecommunications facilities should primarily occur in industrial, commercial, business, office, centre and rural zones.

Telecommunications facilities in areas of high visitation and community use should utilise, where possible, innovative design techniques, such as sculpture and art, where the facilities would contribute to the character of the area.

Telecommunications facilities should only be located in residential zones if sited and designed so as to minimise visual impact by:

(a) utilising screening by existing buildings and vegetation;
(b) where possible being incorporated into, and designed to suit the characteristics of an existing structure that may serve another purpose; and
(c) taking into account existing size, scale, context and characteristics of existing structures, land forms and vegetation so as to complement the local environment.

Telecommunications facilities should not detrimentally affect the character or amenity of Historic Conservation Zones or Policy Areas, Local Heritage Places, State Heritage Places, or State Heritage Areas.

These changes had an instant impact both in terms of actually allowing assessment of telecommunications facilities against specific policy, and also encouraging carriers to prefer certain zones and areas over others by way of both policy and changes to the Development Regulations 1993 and non-complying lists. The policy changes did not contemplate any significant need to place facilities in residential areas (which remains the case in many local government areas today), despite the realities of demand and deployment now dictating such locations as both necessary and more commonplace.

Non-Complying Designation

The designation of telecommunication facilities as ‘non-complying’ within Development Plans has also proven over time to be increasingly problematic, and in many cases is a legacy of the use of the historical term ‘transmitting station’ (or because of the rush in the early part of the 2000s to include telecommunication facilities within zone provisions – particularly residential zones). With the low-density of metropolitan Adelaide where vast expanses of residential areas exist within Council areas, such a designation does not
recognise the importance of reliable telecommunications being provided to households. Provision of services to households is important due to the continuing decline of landlines; the increasing use of mobile data and the general expectation from subscribers that fairly ubiquitous service should be available, particularly in urban areas.

Non-complying applications are particularly problematic for telecommunication facility Carriers, as they tend to attract objections and given that ‘no rights of appeal’ are legislatively available, are usually only attempted by the Carriers when there is simply no other option. The non-complying designation within residential zones also tends to have the effect of ruling out Council Reserves and other areas of open space, which can often be more appropriate locations than small strip groups of local shops or the like.

‘Blanket’ Non-Complying Designations

In some Council areas very large areas are covered by zones which designate telecommunications facilities (or a similar definition) non-complying, making the siting of new facilities extremely difficult.

An example of a problematic Development Plan zoning map is shown below, which is from the City of Mitcham’s Development Plan.

In this example, a telecommunications facility is non-complying in all areas of this map apart from the small NCE-zoned land in the top left corner. This area contains a considerable amount of residential development as well as the suburban and interstate rail corridor. It is topographically complex and there are no tall buildings or other structures.

This is repeated throughout the Council area and is not uncommon in other local government areas, particularly those who do not have BDP-formatted Development Plan.

Clearly, this is a severe constraint to the efficient and effective deployment of suitable infrastructure and either denies residents, businesses and visitors service in some areas altogether, or provides a poor quality and unreliable service, especially for the provision of data services.
Extract from City of Mitcham Development Plan
Hills Face Zone

The Hills Face Zone, which is an expansive zone affecting many Councils across Adelaide, lists ‘transmitting station’ as a non-complying use but contains provisions which allude to such infrastructure.

Notwithstanding that, many people live, work and conduct business in the Hills Face Zone, as well as there being large numbers of visitors. The area is also topographically complex with many steep hills and small valleys, making the provision of services very difficult.

It is salient here to note the February 2018 ERD Court in Alessandrini & Ors v The Corporation of the City of Campbelltown & Anor7 succinctly summarizes the attitude of the Courts to the development of telecommunications facilities and emphasizes that Hills Face zones are ‘not embargoed’ to the development of [essential infrastructure] telecommunications facilities.

Arbitrary Differentiation Between Similar Zones

The Barossa Council has elected to differentiate between the two rural zones within the Council area for the purposes of allowing telecommunications facilities in one, but not the other. This is a curious decision given that there is little or no physical difference between the two rural zone areas. In the example shown below, a telecommunications facility is non-complying absolutely in the Primary Production (Barossa Valley Region) Zone but only non-complying if above 30 metres in the Primary Production Zone.

As can be seen from the map extracts below, there is little difference from a siting perspective between the two zones, except that placement of facilities is effectively precluded immediately outside townships, instead being ‘forced’ inside the townships. This approach is generally at odds with community expectations and severely constrains the effective deployment of infrastructure, particularly in sparsely populated parts of the Council area.

The non-complying trigger of ‘above 30 metres in height’ in the Primary Production Zone is also at odds with the categorisation for such a zone in Schedule 9 of the Development Regulations 2008, which allows for 40 metres as category 2. This occurs in a number of Councils areas associated with the Mt Lofty Ranges.

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Extracts from Barossa Council Development Plan
**Height Limits**

Another common non-complying designator relates to the arbitrary capping of the height of a facility by Development Plan policy, above which a facility becomes either becomes category 3 and/or non-complying. This often happens in small centre zones, such as local and neighbourhood centres and the ‘height limit’ is usually set at 30 metres.

Schedule 9 of the *Development Regulations 2008* lists a number of zones (mostly urban) where a telecommunications facility is category 1 up to 30 metres in height and another group of zones (mostly outer-urban/rural) where a facility is category 2 up to 40 metres in height.

Whilst a height limit can be an effective way of limiting visual impact, it can have the unintended consequence of preventing the effective provision of service, creating the need for additional facilities elsewhere and limiting collocation opportunities. It is prudent to note that the Courts have repeatedly commented that a marginal difference in height is relatively inconsequential to the impact on amenity in an area. Basically, the fact of the development of a base station, complete with monopole and equipment hut is generally little different in terms of visual impact, if 30m or (say) 31 -35m in height. However, the reduction in service delivery in settling for a shorter facility choice may be significant.

**City of Port Adelaide Enfield**

The City of Port Adelaide Enfield, being a council covering a large and varied geographic area, was, in 2000, already in the process of drafting its own amendment to introduce policy to control telecommunications. Although the Ministerial amendment was in place before Port Adelaide Enfield’s work was complete, a further amendment was completed which used the Ministerial policy as a basis but, in some areas, took it considerably further, including introducing a non-complying trigger associated with ‘distance from’ heritage items and areas.

Although no doubt a seemingly reasonable ‘in theory’ policy at the time, this embargo has resulted in a myriad of unintended consequences and has made whole suburbs difficult to adequately service (specifically Semaphore Road and Semaphore Foreshore, which regularly has high numbers of visitors). The difficulties caused are shown on the map below where the dark blue (which shows up as purple when over the pink residential zone) denotes areas where telecommunications facilities are non-complying - taking out most if not all of the suburbs of Semaphore, Exeter, Semaphore South and Alberton and significantly impacting on a number of others. This situation is made worse by the existence of a number of Historic Conservation Areas, which also preclude low-impact facilities being established. In areas such as Semaphore where there are few (if any) buildings above two storeys in height, achieving a viable location for a low-impact facility is extremely difficult, let alone a non-complying development application attempt.
The provisions introduced by Port Adelaide Enfield could be open to constitutional challenge on the basis of discrimination, given that they apply only to telecommunications and no other forms of essential infrastructure. However, no legal challenge has yet been brought in that respect, notwithstanding that the Courts have repeatedly intimated that such finding would be likely should the Court need to consider the point. To date, a decision by the Court has been unnecessary as a finding in favour of the Carrier was made on other grounds (see, for example, Development Assessment Commission v 3GIS Pty Ltd & Anor [2007] SASC 216).

Changes since 2000

Other Councils attempted some changes to the standard Ministerial provisions, with several Councils opting for provisions that equate to a ‘hybrid’ between the Ministerial provisions and those adopted by Port Adelaide Enfield.

The later ‘Better Development Plan’ (BDP) program developed a policy module for telecommunications facilities, but due to its incomplete roll-out, it does not affect all Council Development Plans. The Telecommunications Facilities policy module is based loosely on the original 2000 policy but has removed the associated commentary. The MCF worked closely (at the time), with Planning SA to ensure the transition across to BDP did not
unnecessarily disturb the intent of the 2000 amendment, and to date it has not done so because the Courts have continued to recognise and confirm in judgments dealing with BDP provisions, that telecommunications facilities are essential infrastructure. The BDP module and its impact is discussed in more detail below.

To that end, the planning reforms now proposed are an opportune time for the State to consider, in the light of two decades of experience and evidence, how telecommunications should be treated within the planning system and, most importantly, whether it is constitutionally correct and appropriate to maintain a different, and at times very onerous assessment and approval process when compared to the assessment processes relating to other forms of essential infrastructure. It is suggested that to do so would amount to discrimination and risk a finding that that the new legislation (or such part thereof) is void for inconsistency with the paramount Commonwealth Telecommunications Act.

Relevant Authority

There is also a secondary issue (relating more to process but reflects the policy approach advocated here) for discussion, which relates to the desire or ability of local Councils to deal with telecommunications facilities applications (which could be better described as a State matter). Given that the Councils have had to deal with these applications as they are deemed to the ‘responsible authority’ in the current planning system), the myriad of Court judgments and judicial comment to date has generally assisted Council planners and assessment panels to reach, what are at times, uncomfortable but correct decisions to approve controversial or unpopular proposals. Whilst there does not appear to be a desire to be the relevant authority for such applications, over time Councils have generally learned to cope with the assessment and determination process which generally only comes unstuck when local Councillors interfere or a Council Assessment Panel finds making such a decision with a gallery full of people too difficult. It is suggested that with the exponential increase in demand for services, it is now time for the State to take the decision-making responsibility for all approvals and increase consistency in both process and decision making.

Third Parties

The current system also poorly serves third party objectors and concerned members of the community, insofar as it gives rise to unrealistic expectations about the real influence they might have in the approvals process, and their prospects of success. The confusion arises essentially due to an ‘unusual’(i.e., tall pole / antenna) type of development being made to fit into the ‘normal’ development assessment process (for a building with bulk and height), where it is often perceived that a different set of rules applies.

The siting of telecommunications facilities, which (at least in Adelaide) often consist of a very tall structure in an otherwise low-rise environment, is different to any other type of
non-essential infrastructure forms of development. There are a number of critical elements that need to come together in an adequate mix enabling a new facility to be proposed in a location where it can meet the technical outcome requirements, because ultimately if the technical and network outcomes cannot be met, then the construction of a new facility is pointless and will be discounted by the Carrier as non-feasible.

It is also almost always the case that the telecommunications facility is placed on land not owned by the carrier, with a commercial leasing arrangement entered into between the Carrier and landowner. As such, agreement to proceed from a landowner is critical in order to progress a development application.

As aforementioned, Development Plan zoning and Schedule 9 of the Development Regulations 2008 combine to give some guidance as to the ‘preferred’ placement of facilities but this doesn’t necessarily mean a willing landowner can be found in those locations. Absence of a willing landowner in a preferred zone, puts pressure on Carriers to investigate the potential for development of a telecommunications facility on nearby non-preferred land, and gives rise to what may be considered as a be poor choice of location - but is usually the result of nothing better being available.

Commercial reality about future redevelopment opportunities at non-residential properties often results in the proposed facility needing to be placed on a boundary of land, and most usually the rear boundary of a site, to preserve future options. This often has consequences for the neighbour at the rear, particularly if that neighbour is residential in nature.

Once a location is selected with a willing landowner, the application process can begin. However, the practical difficulty arises at this stage as there are no Development Plan zones that contain specific provisions to guide assessment of telecommunications facilities, and so assessment defers to the wording of the Council-Wide or General section of the Development Plan (depending on the format) being read together with the specific zone provisions.

To that end, it is often difficult – particularly for the community - to reconcile the impacts of a telecommunications facility against zone provisions which deal with dwellings, shops and industry, or worse, heritage matters. Concerns are heightened when a facility is proposed close to housing, a school or some other community use such as a sporting oval. Experience tells that objectors often perceive that there is a different set of rules applying to the carrier, even though the proposal by the carrier is completely different to a proposal for the sorts of development anticipated for the subject zone – such as a house, shop or more traditional ‘building’.

Nevertheless, because telecommunication facilities are subject to the normal planning process, telecommunications facilities need to be classified as category 1, 2 or 3, with most falling into category 2 or 3. When classified as category 2 (as is usually the case in Centre
zones where residential uses often adjoin), only adjacent properties are notified and only those notified are able to lodge a valid representation. In the metropolitan area and particularly where the proposed facility is close to residential uses, this is often seen as a highly inequitable outcome by those who are not notified, as these nearby landowners feel that their amenity will be diminished by the proposed development but are precluded from formally commenting.

Even those who do make a representation are not afforded an automatic right to speak at a Council Assessment Panel meeting and have no rights of appeal. As such, when the proposal is approved, that is effectively the end of the matter - leaving many third parties and neighbours feeling disaffected with the process, together with a sense that the council has let them down.

Applications classified as category 3 often draw considerable concern where the proposed telecommunications facility is close to residential uses, and of course the invitation to make a representation is to the ‘world at large’. Although representors have a right to speak before a Council Assessment Panel and have appeal rights to the ERD Court, usually very little is achieved before the Panel and the review undertaken of caselaw over the past 20 years has revealed that to date there have been NO successful third-party Court appeals.

Various reasons may explain the lack of success of the third parties, the main ones including:

- the ‘non-planning’ nature of concern by residents – i.e., about loss of value of their property,
- issues that have already been considered and settled by the Court – i.e., health risk by EME exposure (which the Courts accept is a matter dealt with by World Health Standards, and is not a matter for Court investigation, or
- information that has been adequately dealt with in the preparation of the development application, but the representors have not understood is contained within the application documentation.

Generally, the most common issues of Category 2 and Category 3 concern include:

- Matters that are based on perception or are otherwise intangible
- Concerns about possible health effects, despite the rigorous standards in place
- Concerns over property values (which are not helped by baseless statements sourced from real estate agents)
- Over-statement of the real impact of the facility due to a poor interpretation of the plans
- Genuine incredulity or dismay that the Council has even assessed the application much less recommended it for approval
- General anger over a perceived lack of consultation
- Assumption there must be a better location, without suggesting anywhere
➢ Simply wanting the facility to be somewhere else and away from the person making the representation
➢ Not having read any of the application documentation or, more often, not being made aware of the applicant’s response to representations which has specifically addressed some of all of the issues raised.

Driven by the imperative to provide service efficiently and economically, carriers will always strive to provide as much information as possible to councils and address (and re-address) questions which are not strictly planning matters or are otherwise irrelevant, because there is a recognition that most of the concerns raised are genuine, even if they are unlikely to change the outcome or be considered by council.

Experience has it that following this exchange, third parties often attend Panel meetings and see their concerns cast aside with approval granted to a meritorious development application – because the carriers have been able to demonstrate need for, and suitability of the site for the development of the telecommunications facility. If the third parties have a right of appeal to the ERD Court they then have a similar experience at the preliminary conference, where their concerns are still not given any affirmation and the burden of proof is on them to demonstrate that there is either no need for the facility, or that there is a better available site available. In reality, because of scarcity of available sites that meet the technical requirements in the discrete area of need, it is all but impossible for a third party to defeat the appeal. The appeal process is therefore a cause not only of frustration for third parties, but also of great cost and delay to the carriers in providing the necessary service that the proposal has been designed to deliver (both in the immediate area of need, and as part of the overall network).

This approvals and appeal process, which has been repeated over and over across metropolitan Adelaide and South Australia for the past 20 years, amounts to an assessment system that is broken as it is a system that inappropriately attempts to treat telecommunications facilities as ‘normal’ development, when they are in fact both necessary and essential infrastructure.

Council Owned Land

The concern in the community has a knock-on effect of making council-owned land, which would often provide a better solution for such facilities, unavailable, unattractive or simply too ‘political’ to pursue.

Elected members are often powerless with respect to the development application process (owing to the appeals process that can provide an approval where they may not have done so), but they hold all the power when deciding whether a carrier may lease council land and will often respond to community concern by refusing to permit access. In the cases of
Foresto & Mastripolito v Development Assessment Commission & Anor\(^8\) and Bury and Anor v Development Assessment Commission & Hutchison 3g Australia P/L\(^9\), Council frustrated the development of Court approved telecommunication facilities, by eventually refusing tenure, even though initial support for tenure had been indicated to the carrier. In such circumstances, the facility, which is still required, must be sited elsewhere, and this is usually in a less ideal position with greater impacts - but ironically and inadvertently, the fact of having ‘tested’ the Council site enhances the chance of approval because the ‘better’ council-owned site is not available.

In both Bury and Foresto both facilities were non-complying and despite community opposition both were approved by the Development Assessment Commission. Both were then separately appealed to the ERD Court by third parties and both appeals were dismissed and the approvals upheld. Community pressure was then exerted on the City of Campbelltown and the leases were refused.

As a result of this type of behaviour, carriers will rarely pursue council-owned land unless there is no other option.

\(^8\) [2005] SAERDC 45
\(^9\) [2005] SAERDC 43
5. COURT JUDGMENTS AND LEGAL CONSIDERATIONS

Initial cases tested before the Environment Resources and Development Court (The ERD Court) in SA, grappled with categorizing and defining mobile telephony structures, and how these structures (in their various forms: monopoles, antennas, equipment shelters etc) fitted within the zoning provisions set out in the Development Plans across the State.

The fragmented nature of Councils’ drafting, and the then trend of having unique Objectives and Principles of Development Control for discrete zones within Council areas, led to a myriad provisions for transmitting stations or the like. There was no uniformity or definition/s to guide consistent planning for these facilities on a State-wide basis. Accordingly, and as will be seen in the summaries below, the earliest cases focus on defining the ‘what amounts to’ a ‘transmitting station’, and also to establishing an acceptance by the Courts of the form of TF’s as ‘slim poles’ that do not have the bulk of typical buildings with storeys to which height provisions in the Development Plans are aimed.

Noting the confusion arising through the early cases dealt with, Government stepped in, with the then Planning Minister passing amendments to the Development Regulations 1993 and introducing the Telecommunications Facilities State-wide Policy Framework PAR (Interim) (Ministerial) – [31 August 2000], which was gazetted the following year.

These changes introduced:

- a uniform structure and understanding about the form and nature of telecommunications facilities (TF’s), and,
- guidance about how TF developments within particular zones were to be categorized.

However, owing to the differing circumstances of case by case scenarios (across the range of councils and zones therein, and across the physical design of the TF’s) the intended ease of assessment was not always apparent. Having said that, over time, and coincidental with the ever-increasing demand for mobile telecommunication service delivery, the Judiciary (here read ERD Court, Supreme Court and Full Bench Supreme Court of SA) found that:

- TF’s are items of essential infrastructure,
- TF’s have radio frequency engineering issues, specifically, a clear ‘line of sight’ requirement, and
- The has been an expediential increase of demand for services/facilities, necessitating the need to locate TF’s in areas of need not falling within the ‘preferred’ zones – that is to say, that proposals were put forward if no other location could be achieved, within Residential or other sensitive zones.

11 Telecommunication Facilities State-wide Policy Framework PAR (Ministerial) - [30 August 2001].
Above and beyond the ‘blanket’ application of the Ministerial PAR provisions, it was also open to individual Councils to add additional TF provisions in Development Plans for their areas.

In more recent judgments, the ERD Court has laid out clear steps for assessment of TF’s. The most recent decision of the ERD Court in Alessandrini & Ors v The Corporation of the City of Campbelltown & Anor\(^\text{12}\), summarizes the current state of development plan interpretation for an appropriate assessment of the TF provisions incorporated in Development Plans across the State of South Australia since 2001.

Whilst State based planning legislation provides a guide to assessment in the decision-making process within South Australia, regard must also be had to the paramountcy of the Commonwealth Telecommunications Act 1997. It is a Constitutional dictate that Commonwealth legislation prevails to the extent of any inconsistency or discrimination\(^\text{13}\) between Commonwealth and South Australian laws. Cases discussed below include judicial acceptance of this constitutional principle and go so far as to note that in the event of inconsistency, State based provisions would be invalid and unenforceable\(^\text{14}\). In the 2007 decision of the full bench of the Supreme Court of South Australia in Development Assessment Commission v 3GIS Pty Ltd & Anor\(^\text{15}\), the Court made clear statements about the potential invalidity of telecommunication provisions arising in state laws or development plans that are contrary to the dictates of the Telecommunications Act.

Over the period 1998-2018, a review of case outcomes includes recognition that:

- Providers of Telecommunication services have an onus to investigate a range of sites, and then prove in evidence that there is ‘no better’ site available for the development of the TF.
- This investigation involves an onerous and expensive site identification and selection process for carriers, and is an onus NOT shared by any other proponent for development approval, and especially not any other provider of essential infrastructure (raising issues of discrimination and potential severance of State law provisions)
- Council or Third Parties do not have industry-based RF expertise or information about the Carrier network sufficient to model a defensible case in Appeals, rendering

\(^{13}\)Section 109, Commonwealth Constitution
\(^{14}\)See for example para 64 -67 in Development Assessment Commission v 3GIS Pty Ltd & Anor [2007] SASC 216 (18 June 2007) ---The argument is limited to the alleged discriminatory effect of the Telecommunications Facilities provisions of the Development Plan....I would hold....invalid by virtue of the operation of clause 44 of Schedule 3 [Telecommunications Act 1997 Cth] as discriminating against carriers generally or at least the class of carriers who are required to obtain development approval for the installation of facilities in accordance with the requirements of the Development Act’.
\(^{15}\)[2007] SASC 216 (18 June 2007) at para 43
the Appeals system frustrating for objectors, and redundant in terms of their inability to succeed.

The MCF has prepared a summary of the relevant case law which provides a comprehensive snapshot of the evolution of Judicial understanding and comment concerning appropriate and proper assessment for TF’s is discussed, together with the identities/expertise of the experts called, and the nature (and value to the Court’s ‘de-novo’ assessment) of evidence adduced.

Upon hearing evidence, the Courts have come to recognize that the Carriers, in having the onus of investigation of a multiplicity of sites (so as to find the best available RF solution / location for the provision of telecommunications services in an area of need), face a process that differs from the usual planning processes applicable to development application and approvals in South Australia. Proponents for a telecommunications facilities development application face an inequitable planning process that is cumbersome, inefficient, expensive and the cause of extensive delay in the provision of services.

A review of all relevant case law has revealed that NO third-party Appeals have succeeded over the 20-year period surveyed and Councils who have defended refusals have also achieved very little and suffered delay and expense. This is in part because the system does not work, but in the main, because of the now recognised nature of TF’s as items of essential infrastructure that deserve more appropriate and efficient treatment by the planning system.

Such an approach would be for telecommunications to be formally recognised by the State as essential infrastructure and be assessed in line with other items of essential infrastructure in South Australia. Electricity, water and railways are other forms of essential infrastructure, and each has been afforded specific processes, exemptions and/or exclusions from the definition of ‘development’ as that term is understood in the Development Act 1993, or Regulations thereunder.
The Better Development Plan (BDP) model

The Better Development Plan format sought to standardize Objectives and PDC’s across Council Development Plans through a number of policy modules including one for Telecommunications Facilities, which as noted above deleted the commentary introduced in the 2000 Ministerial amendment. The BDP provisions have now been judicially noted in recent cases including the Aldinga and Sellicks Beach cases discussed below.

The BDP provisions were similar to, but varied from the Telecommunications Facilities provisions as appeared in earlier cases, including the Full Supreme Court Appeal case: Development Assessment Commission v 3GIS Pty Ltd & Anor [2007] SASC 216. There, and based on the earlier wording of the Ministerial Telecommunications facilities PAR of 2001, the Court noted:

*Telecommunications facilities are an essential infrastructure required to meet the rapidly increasing community demand for communications technologies. To meet this demand there will be a need for new telecommunications facilities to be constructed….. Where required, the construction of new facilities is encouraged in preferred industrial and commercial and appropriate non-residential zones. Recognising that new facility development will be unavoidable in more sensitive areas in order to achieve coverage for users of communication technologies, facility design and location in such circumstances must ensure visual impacts on the amenity of local environments are minimized.*

The fact that the ‘note’ recognizing that TF’s are ‘essential infrastructure’ has not been carried forward into the BDP module did not stop Commissioner Green so finding (that TF’s are essential infrastructure), as set out in his approach to assessment in both the Aldinga determination: Telstra Corp Ltd v City of Onkaparinga & Anor [2013] SAERDC 25 at para 30, and in the Sellicks Beach determination: Telstra Corp Ltd v City of Onkaparinga [2013] SAERDC 28, at para 25.

Both cases make almost identical observations in this regard, with the Sellicks Beach version stating at paragraph 25:

*I have had regard to case law dealing with telecommunications facility appeals and particularly DAC v 3GIS Pty Ltd [2007] SASC 216 particularly at paras 44-48 and 69-76; Hutchison 3G Pty Ltd v City of Mitcham & Ors [2005] SASC 249; and City of Burnside v City Apartments Pty Ltd [2004] SASC 294 regarding ‘minimisation’; and a number of other judgments of this Court, particularly in the metropolitan Adelaide area. Being mindful of the approach and outline to assessment in those judgments I note that some of the key aspects include:*

*• that the Development Plan expressly recognises in its objectives, that*
telecommunications facilities are essential infrastructure required to meet the rapidly increasing community demand for communication technology, and that demand is assumed;

- the Development Plan assumes that telecommunications facilities will be constructed in the Council area in order to satisfy the community need for such relevant telecommunication technology;

- it is appropriate to ensure that the necessary facilities are constructed in a manner which ensures that coverage is available to satisfy the need (in the target search area and the radio frequency (RF hereafter) technology need in the context of surrounding facilities and demand growth), but in a way which minimises the visual impact of those facilities on the amenity of the local environment;

- it is not a matter of balancing the impact of a particular development on the amenity against some demonstrated demand need as the demand need is given;

- with respect to the facility need (as opposed to demand need), the weighing process is not a balancing of the need against the effect of development on visual amenity but a weighing of available alternatives and options and the extent to which they would each minimise visual impacts on the amenity of the locality;

- in considering minimising the effect on the environment, the planning authority is to consider alternative sites or low impact facilities, whether minimisation can be better achieved by installation of a facility at some other site(s) but the other so-called preferred or possible site(s) will need to meet the facility demand and if they do not, they may be discarded from the search;

- with regard to the role of alternative sites it is appropriate to consider obvious alternative sites which would clearly better meet the objectives and principles of the Plan and to consider them in a practical and common-sense fashion; and

- where alternative sites are under consideration, the Court is required to consider only the proposed facility and not whether some alternative site with some modified form of development would be more environmentally sensitive. An alternative site would have to be a reasonably practical alternative (including the likelihood of tenure being obtained) that would meet the facility demand and be a feasible alternative.’

The words emphasised in bold are important. Commissioner Green carried forward from the Supreme Court decision in Development Assessment Commission v 3GIS Pty Ltd & Anor [2007] SASC 216, the reference to TF’s being ‘essential infrastructure’, notwithstanding that the
specific wording of the BDP version of the Development Plan tested in the Sellicks Beach and Aldinga cases bore no reference to TF’s being essential infrastructure. A similar approach was taken by Commissioner Green in the Whyalla determination below.

More recently, the Alessandrini v Campbelltown decision determined that the lack of specific wording (about the nature of TF’s as essential infrastructure) does not derogate from an understanding that they are so.

As is presently understood, a new Development Code will replace all Development Plans across the State, and insofar as the BDP provisions that currently apply are ‘co-opted’ into that code, it is worth considering the other provisions in the BDP model that relate to Infrastructure. This is discussed further in Section 5.

Public Infrastructure and Discrimination:

Discrimination against the carriers is explicitly forbidden by Schedule 3 clause 44 of the Telecommunications Act 1997 (Cth). For some time, there has been an underlying argument about Constitutional Discrimination against Carriers (as providers of essential infrastructure), but to date, the Courts have not made a finding on the question as cases have been determined on other grounds. There has however been judicial comment made, indicating the anticipated to be made by the court should the need to formally consider the issue of discrimination against carriers arise.

The two following cases are relevant to the discussion about Constitutional inconsistency, in the nature of discrimination. The cases are:

- Bayside City Council v Telstra Corp Ltd [2004] HCA 19, and

In the Bayside case, the High Court found that to the extent of an inconsistency between State and Commonwealth laws, the State laws were invalid. The Commonwealth law being the Telecommunications Act 1997 (the Telco Act):

7. In the exercise of its powers, including the power, conferred by s 51(v) of the Constitution, to make laws with respect to postal, telegraphic, telephonic, and other like services, the Parliament, in the Telco Act, provided a regulatory framework which was intended to promote the development of an efficient and competitive telecommunications industry, including the supply of carriage services to the public, and to ensure that such services are reasonably accessible, and are supplied efficiently and economically to meet the social and business needs of the Australian community (s 3).....
The Telco Act, in Schedule 3, clause 44 specifically provides for situations of inconsistency between Commonwealth and State legislation insofar as the latter may impact on the development of an efficient and competitive supply of services. The High Court noted:

13 *In Div 8 of Pt 1 of the Schedule there appears cl 44, which is central to the present appeals. It is in the following terms:*

"44. (1) The following provisions have effect:

(a) a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;

(b) without limiting paragraph (a), a person is not entitled to a right, privilege, immunity or benefit, and must not exercise a power, under a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;

(c) without limiting paragraph (a), a person is not required to comply with a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally.‘

Without detailing the facts of the case, it is sufficient for the present to know that the High Court declared that State Legislation that discriminated against Telstra and Optus was invalid.

Further, in the later SA Full Supreme Court case of *DAC v 3GIS*, the Court, when considering facts relating to discrimination against Telco’s, the court held:

67 *Accordingly, on the information available and if it were necessary to do so, I would hold that the requirements of the Development Plan, insofar as they require proof of demand need in the area covered by the proposed facility, would be invalid by virtue of the operation of clause 44 of Schedule 3 as discriminating against carriers generally or at least the class of carriers who are required to obtain development approval for the installation of facilities in accordance with the requirements of the Development Act.‘

Telecommunications Facilities although now judicially recognized as items of essential public infrastructure, are not so recognized for the purposes of the *Development Act 1993*. Included in the items of public infrastructure at Section 49 of the *Development Act 1993* are:
"public infrastructure" means—

(a) the infrastructure, equipment, structures, works and other facilities used in or in connection with the supply of water or electricity, gas or other forms of energy, or the drainage or treatment of waste water or sewage;

(b) roads and their supporting structures and works;

(c) ports, wharfs, jetties, railways, tramways and busways;

(d) schools, hospitals and prisons;

(e) all other facilities that have traditionally been provided by the State (but not necessarily only by the State) as community or public facilities.

As an example, when responsibility for Railway activities passed from the Commonwealth to individual States, the Development Act and the Regulations thereunder, were quickly amended to recognise that certain railway acts and activities needed to be excluded from the definition of development, or otherwise divided into a framework of what was ‘complying’, category 1, etc. This ensured that the delivery of rail services was not hampered by a cumbersome planning approval process that would grind services to a halt. It is suggested that similar or equal treatment should be reflected in the new planning regime for TF’s so as to enable timely and effective service delivery.

The evolution of case law over two decades shows the Court’s consideration of the increase of the demand for services and the ever improving ‘generations’ of telecommunications technologies. In essence, legislation has not kept astride with the rapid expansion of consumer demand for services, nor the expansion of the network. But what is clear, is that the Courts have come to terms with the essential nature of mobile telephony, data and Wi-Fi delivery via the infrastructure that must be put in place to allow for effective service delivery.
6. REVIEW OF EXISTING DEVELOPMENT PLAN POLICIES

Two formats of Development Plans persist in South Australia with most Councils now having the BDP format. The BDP format contains both a ‘Telecommunication Facilities’ and ‘Infrastructure’ modules. A review of both modules is set out below with a view to providing clarify in wording and logic in application for telecommunications facilities.

Given that the ‘old’ Development Plan format (which has not currently been replaced in all Councils by the BDP format), will be superseded by the new system it is not considered necessary to review the telecommunication facilities policies within those documents, albeit they form the basis of the BDP version.

As is set out below, it is recommended that the existing Telecommunication Facilities module policy be removed, with part only of the wording reviewed and added to as necessary and incorporated into the Infrastructure module. This will reduce the number of modules and more logically place telecommunications policy with other essential infrastructure.

The existing Objectives in the Telecommunication Facilities module read:

TELECOMMUNICATIONS FACILITIES

OBJECTIVES

1. Telecommunications facilities provided to meet the needs of the community.

2. Telecommunications facilities sited and designed to minimise visual impact on the amenity of the local environment.

Both of these Objectives have provided the basis of a facility need based approach to the assessment of telecommunication facilities and the reasonable minimisation of impact. The Courts have interpreted them to given legitimacy to the status of telecommunication facilities as essential infrastructure and to place only limited weight on the trade-off/balance between provision of adequate service and the visual impact.

Both of these Objectives are acceptably worded and with only some minor changes to the wording in the Infrastructure module can be carried over.

The existing Principles of Development Control (PDC) for the Telecommunication Facilities module state:

1. Telecommunications facilities should:

   (a) be located to meet the communication needs of the community

   (b) use materials and finishes that minimise visual impact

   (c) have antennae located as close as practical to the support structure
(d) be located primarily in industrial, commercial, business, office, centre and rural zones;

(e) where technically feasible, be co-located with other telecommunications facilities

(f) incorporate landscaping to screen the development, particularly equipment shelters and huts

(g) be designed and sited to minimise the visual impact on the character and amenity of the local environment, in particular visually prominent areas, main focal points and significant vistas.

Most of these provisions have proven to be workable over time with a particular recognition that part (d) identified what have become known as the ‘preferred’ zones with the key operative word being ‘primarily’.

This PDC also properly recognises that collocation is a more desirable outcome than a brand new, standalone facility, but can also be applied to allow new telecommunication facilities (such as a new monopole) to be sited at existing telephone exchanges for example.

Part (g) is considered a superfluous and possibly unnecessarily constraining provision and should not be carried over.

To that end, a re-worded version of this provision should be inserted into the Infrastructure module and is set out at the end of this section.

2  Telecommunications facilities in areas of high visitation and community use should use innovative design techniques (eg sculpture and other artworks) where possible and where the resulting design would positively contribute to the character of the area.

This PDC has proven to be an unworkable and impractical legacy of the original Ministerial amendment in 2000, where the Minister at the time was also the Arts Minister and it has been suggested anecdotally at least this played a part in its creation. However, in fairness it is also from a time when the telecommunications industry and networks were in their relative infancy and its requirements were not well understood.

First, it is unclear as to what ‘high visitation and community use’ actually means in this context, whether those are two separate things or whether they are to be read together. As such, a shopping centre may or may not be caught by this provision, or an area used by the community but not visited by large numbers of people might not be captured.

Second, this PDC fails to recognise the physical requirements of telecommunication facilities (particularly height), the increased bulk associated with disguising such a structure, and the limitation placed on future expansions and collocations. These problems increase almost exponentially the more elaborate the proposed structure.
The increased bulk that must necessarily result from such a structure will also have the effect of having a greater visual impact and drawing attention to what would otherwise simply appear a piece of modern day infrastructure, albeit utilitarian in nature, that the community is well accustomed to seeing and has over the last couple decades become extremely commonplace.

Lastly, views on what would ‘positively contribute to the character of the area’ is likely to be as varied as the number of opinions sought.

As such, there have been few if any successful implementations of this policy and where it has been applied the original intent and design integrity of the structure has been eroded over time by expansion of equipment and collocation. It is also not a policy provision that has been pursued with any particular vigour by Councils or the community.

It is also noted that such a requirement does not apply to any other form of infrastructure and as such there is the potential for a discrimination argument to be mounted, which if successful would invalidate the provision in any event.

The requirement for telecommunication facilities to minimise their impact should be sufficient to guide siting and design. Accordingly, this provision should be removed from any future policy module as it has no practical application.

3 Telecommunications facilities should be located in residential zones only if sited and designed to minimise visual impact by:

(a) using existing buildings and vegetation for screening

(b) where possible, incorporating the facility within an existing structures that may serve another purpose maintaining that structure’s character

(c) taking into account the size, scale, context and characteristics of existing structures, landforms and vegetation so as to complement the local environment.

It is obvious that residential zones will generally be more sensitive to the visual impacts of a telecommunications facility but as set out above there is on-going and growing need for facilities to properly serve such areas. It is also the case that many areas of open space such as reserves and sporting ovals are within residential zones but these are often the most appropriate locations for telecommunication infrastructure, particularly where they can be incorporated into lighting structures.

The intent of this policy is acceptable but requires some re-wording to ensure it is not unreasonably difficult to deploy telecommunication facilities in such zones (albeit preference should still be given to appropriate non-residential zones). Similar to PDC 2, it is not practical to expect telecommunication facilities to be compatible with the ‘size, scale, context and characteristics of existing structures, landforms and vegetation’ in what are
typically low density, low rise residential areas given the entirely different physical and technical requirements. It is therefore also unlikely that a facility in such an environment could be designed and sited in such a way to ‘complement the local environment’ and still be effective.

The Courts have opined that it is a ‘given’ that such facilities will have some detrimental impacts but are nonetheless required, with minimisation of impacts the key assessment criteria (which in turn is achieved through siting and design).

To that end, a re-worded version of this provision should be inserted into the Infrastructure module and is set out at the end of this section.

4  Telecommunications facilities should not have a direct or significant effect on the amenity, character and settings of Historic Conservation Areas, local heritage places, State heritage places or State Heritage Areas.

While the intent and apparent reasonableness of this PDC is apparent, it is nonetheless the case that despite heritage listings or heritage/conservation areas in particular, residents and businesses within such areas still require reasonable access to a reliable and useful service. As has been shown above, entire suburbs can be excluded from having the required infrastructure deployed where this type of approach has been left unchecked.

As such, any controls cannot be overly prescriptive, but it is understood that a provision at least recognising and partly dealing the question of heritage will be expected by the community – as it may be in respect of other forms of essential infrastructure structures.

To that end, a re-worded version of this provision should be inserted into the Infrastructure module and is set out at the end of this section.

INFRASTRUCTURE MODULE

Whilst the thrust of these objectives and principles of development control relate to the full range of development anticipated in current development plans, they are relevant to the development of TF’s.

There is currently no mention of any item of infrastructure being ‘essential’, but it would not be unreasonable to argue that all (i.e., electricity, water supply, effluent disposal, telecommunications etc) are essential infrastructure in that each is equally ‘essential’ to orderly and economic development.

The existing Infrastructure module Objectives read:

1. **Infrastructure provided in an economical and environmentally sensitive manner.**
2. **Infrastructure, including social infrastructure, provided in advance of need.**
3. **Suitable land for infrastructure identified and set aside in advance of need.**
4. The visual impact of infrastructure facilities minimized.

5. The efficient and cost-effective use of existing infrastructure.

It is easy to conclude that all of these Objectives apply not only to the supply of telecommunications infrastructure, but to the need and demand demonstrated by the community’s base desire to be connected and have their expectation of the enjoyment of reliable and reasonably consistent services. Such is a reasonable expectation, and one that is technologically achievable if infrastructure is able to be located as needed. Further, now grouping the provision of TF’s with other forms of accepted ‘essential’ infrastructure, will consolidate the contention of the essential nature of telecommunications in the 21st century.

Telecommunications is now, and has for the past 20 years, usually been provided by the private sector and can be basic in nature at the commencement of development, (that is, it can initially be provided through existing infrastructure outside an area of need and expand over time -as opposed to underground infrastructure which must all be placed in a common trench at the same time). The deployment is often not as comprehensive or ubiquitous as, say, electricity and sewer. However, there should be some level of telecommunications provided at the outset of new areas of [say] housing developments, and an appropriate land use and zoning regime to allow for planning and future deployment.

The BDP Infrastructure Principles of Development Control (PDC) are as follows, with comments for the purposes of this document also set out:

1. Development should not occur without the provision of adequate utilities and services, including:

   (a) electricity supply
   (b) water supply
   (c) drainage and stormwater systems
   (d) waste disposal
   (e) effluent disposal systems
   (f) formed all-weather public roads
   (g) telecommunications services
   (h) social infrastructure, community services and facilities
   (i) gas services.
Telecommunications are already included in this PDC and so already given some legitimacy as ‘essential infrastructure’.

It is suggested the words ‘adequate utilities and services’ be changed to ‘essential infrastructure’.

It is suggested the words ‘including mobile telecommunication services’ be added at (g).

2 Development should only occur only where it provides, or has access to, relevant easements for the supply of infrastructure.

As the placement of telecommunications is more complex than planning a common trench for other infrastructure, telecommunications facilities would not rely on easements or the specific identification of land. However, such development would instead rely on the broader policy regime that allows the necessary infrastructure to be sited on the basis of technical requirements.

3 Development should incorporate provision for the supply of infrastructure services to be located within common service trenches where practicable.

Clearly this is not applicable to telecommunications facilities that need to be above ground, but the wording ‘where practicable’ already recognises this.

4 Development should not take place until adequate and coordinated drainage of the land is assured.

Not applicable.

5 Development in urban areas should not occur without provision of an adequate reticulated domestic quality mains water supply and an appropriate waste treatment system.

Not applicable.

6 In areas where no reticulated water supply is available, buildings whose usage is reliant on a water supply should be equipped with an adequate and reliable on-site water storage system.

Not applicable.

7 Urban development should not be dependent on an indirect water supply.

Not applicable.

8 Electricity infrastructure should be designed and located to minimise its visual and environmental impacts.

This PDC recognises that some electricity infrastructure will need to be located above ground and have tall structures associated with it, which is similar to the basic requirements
of telecommunications. As such, this PDC should be modified to be requirement of all infrastructure and include some of the wording from the current Telecommunication Facilities module, such as those relating to materials and finishes and landscaping.

9  *In urban areas, electricity supply serving new development should be installed underground.*

Not applicable.

10  *Utilities and services, including access roads and tracks, should be sited on areas already cleared of native vegetation. If this is not possible, their siting should cause minimal interference or disturbance to existing native vegetation and biodiversity.*

This PDC is suitable for application to all of those services identified in PDC 1 above. As such, for consistency, the words ‘Utilities and services’ should be replaced by ‘Essential infrastructure’.

11  *Utility buildings and structures should be grouped with non-residential development where possible.*

This PDC could be improved by replacing the words ‘Utility buildings and structures’ with ‘Buildings and structures associated with essential infrastructure’.

12  *Development in proximity to infrastructure facilities should be sited and be of a scale to ensure adequate separation to protect people and property.*

It is not entirely clear what this last PDC is attempting to achieve but applies to development near essential infrastructure and is not a requirement of the siting of the infrastructure itself. It appears to be a safety provision such as might be applied to separation to a water chlorination plan or electricity substation where fumes, fire or explosion might be a potential hazard. Telecommunications facilities only real impact is that of visual impact and no separation distance is required for safety.

As noted, given this PDC seems to apply to future development adjacent or near essential infrastructure and not guiding the siting of the essential infrastructure itself, it should be deleted from this module.

**Additional Infrastructure Module Policy**

If what is currently the General Section policy for telecommunications is to be moved into the Infrastructure module, some additional policy will be required. Based on the review of the existing BDP Telecommunication Facilities and Infrastructure policy modules set out above, it is suggested the following be added to the Infrastructure module to allow the Telecommunication Facilities module to be deleted in its entirety.
Telecommunications facilities should:

(a) be located to meet the communication needs of the community

(b) be located primarily in non-residential zones

(c) where technically feasible, be positioned or co-located with other infrastructure.

Infrastructure located in residential zones should be sited and designed to minimise visual impact by:

(a) using existing buildings and vegetation for screening

(b) where possible, incorporating the facility within existing structures that may serve another purpose and retaining that structure’s character.

Electricity infrastructure, telecommunications facilities and other similar infrastructure should be sited and designed to minimise impacts on the amenity, character and settings of heritage items, areas and places.

For ease of reference, a revised Infrastructure Module (which picks up all the information here discussed) is attached as Annexure A.
7. LEGISLATION IN OTHER STATES

As noted above, South Australia has some exemptions within Schedule 3 of the Development Regulations 2008 that can be applied to telecommunications infrastructure deployment but these exemptions are only an adaptation of existing policy that was not originally intended to be used for mobile telecommunications. As such, they are of very limited application and do not anticipate all the equipment necessary for an entire new facility to be deployed.

Following deregulation by the Commonwealth in 1997, several States recognised that it might not be appropriate for all new telecommunications facilities which were not low-impact facilities to be caught by the full force of the planning system. These States implemented codes or policies at a State level so as to enable certain forms of TF’s. These codes and policies help to set a framework by which all Councils are bound when considering such infrastructure, and in some circumstances effectively expand the Commonwealth’s exemptions by allowing certain types of infrastructure in some zones, subject to meeting performance criteria. This type of scheme has proven effective and provided greater certainty to carriers.

New South Wales

In New South Wales the State Environmental Planning Policy (Infrastructure) 2007 (known as ISEPP) contains provisions relating to telecommunications. The policy underwent a review which resulted in amendments being made in December 2017. The ISEPP is the most expansive and progressive of all State-based regimes.

The ISEPP essentially expands the amount of infrastructure which can be deployed beyond those identified by the Commonwealth in the Low-Impact Determination and that which is caught by the planning system and subject to ‘normal’ assessment. This includes new towers up to 50 metres tall in rural zones, up to 30 metres tall in industrial zones and various other exemptions (all subject to certain performance and siting criteria). Where approvals are not required, new structures are required to undergo community consultation via the Deployment Code process (DC6).

The NSW Planning and Environment website states:

The State Environmental Planning Policy (Infrastructure) 2007 assists the NSW Government, local councils and the communities they support by simplifying the process for providing infrastructure like hospitals, roads, railways, emergency services, water supply and electricity delivery.

The Infrastructure SEPP plays a key part delivering the NSW Government’s infrastructure works.
On 15 December 2017, the NSW Government finalised amendments to the Infrastructure SEPP. The amendments make it easier and faster to deliver and maintain infrastructure, including new provisions for health service facilities, public administration buildings, state sports and recreation centres, and lead-in sewer and water infrastructure. They also seek to optimise the use of commuter hubs and enable councils to better manage and maintain their lands, including their operational lands.

The NSW Government has also produced a separate document called the Telecommunications Guideline which summarises all of the telecommunications parts of the ISEPP in one document.

The NSW Planning and Environment website says of the Telecommunications Guideline:

*The Infrastructure SEPP allows telecommunications infrastructure providers to be either exempt from planning approval, or be able to receive a ten-day complying development approval, for a number of telecommunications facilities subject to strict criteria including health and amenity considerations.*

*New telecommunications towers in residential zones will continue to require development application approval from the local council.*

*The Telecommunications Guideline provides further detail about the types of infrastructure that can be classified as exempt or complying development and the requirements and development standards that must be met for each facility type.*

As such, the NSW legislative regime has:

- Identified and classified telecommunications as infrastructure being of the same essential nature as a range of other utilities;
- Has developed an over-arching policy which permits certain activities to occur without any local government approval provided certain performance and siting criteria are met; and
- Has allowed for easier deployment of facilities that are likely to be less controversial in any event (such as rural and industrial deployment).

This approach not only further streamlines the more straightforward deployment, it actively encourages carriers to utilise it in preference to development applications. It also states very plainly the importance NSW places on the timely and cost-effective deployment of telecommunications infrastructure and the balance that needs to be struck with public interest and amenity.
Victoria

Victoria has adopted *A Code of Practice for Telecommunications Facilities in Victoria July 2004* to clearly enunciate the State’s position with respect to the importance of telecommunications facilities in Victoria, as well as effectively expanding the range of facilities (and the conditions required) that do not require approval, beyond those contained in the Low-Impact Determination.

The Code states:

*A Code of Practice for Telecommunications Facilities in Victoria is an incorporated document in all planning schemes in Victoria.*

*The purpose of this code is to:*

- Set out the circumstances and requirements under which land may be developed for a telecommunications facility without the need for a planning permit.
- Set out principles for the design, siting, construction and operation of a telecommunications facility which a responsible authority must consider when deciding on an application for a planning permit.

*It aims to:*

- Ensure that telecommunications infrastructure and services are provided in an efficient and cost effective manner to meet community needs.
- Ensure the application of consistent provisions for telecommunications facilities.
- Encourage an effective statewide telecommunications network in a manner consistent with the economic, environmental and social objectives of planning in Victoria as set out in section 4 of the Planning and Environment Planning Act 1987.
- Encourage the provision of telecommunications facilities with minimal impact on the amenity of the area.

The Code needs to be read in conjunction with the applicable local planning scheme. A standard clause (52.19) has been inserted into all planning schemes which requires a telecommunications facility to obtain approval if it does not meet the Code.

Section 4 of the Code sets out four principles for the design, siting, construction and operation of telecommunications facilities, which assists carriers during the site selection and design stage and councils during the assessment process.
Section 5 of the Code sets out in detail those facilities which do not require approval and in what circumstances. It is this section of the Code that expands the Low-Impact Determination exemptions.

The Victorian Code effectively provides that telecommunications facilities cannot be prohibited in any zone and must be subject to the same assessment approach as any other form of development when assessed. This recognises that despite their impact, such facilities are essential, and solutions must be found for the benefit of the community at large. These provisions are in conformity with and support the intention of the Commonwealth Telecommunications Act.

Western Australia

Western Australia has adopted a State Planning Policy for telecommunications infrastructure. Its formal title is State Planning Policy 5.2 – Telecommunications Infrastructure September 2015.

Unlike NSW or Victoria, the policy document simply states the State’s position with respect to the importance and role of telecommunications infrastructure, which is intended to provide direction to local government for incorporation into local planning schemes and council policy documents.

It is otherwise a ‘hands off’ approach and in unfortunately, in practice the State Planning Policy has had little effect on views held by Council(s), as many still tend to have very conservative policies about telecommunications facilities, some of which directly (and indirectly) undermine the State’s position which recognizes the significance and importance of the telecommunications network.

Unsurprisingly, Western Australia is seen by the industry as one of the most difficult jurisdictions in which to deploy telecommunications infrastructure in a timely and cost-effective manner.

Northern Territory

In the Northern Territory local councils are not the planning authorities, which is instead centralised. Development Assessment Services, which is part of the Department of Infrastructure, Planning and Logistics, handles all development applications in the Northern Territory, with the Development Consent Authority determining applications beyond staff delegations or if objections are received. As such, consistency in the approach to assessment is much greater in the Northern Territory.

Although the zoning policy in the Northern Territory Planning Scheme has no specific references to telecommunications, section 13.5 of the Scheme is dedicated to telecommunications and provides the basis of a consistent approach and application. As such, determinations of such applications have been relatively smooth and consistent.
despite various controversial applications. Third party appeal rights are also extremely limited in the Northern Territory.

Where the Development Consent Authority (which has the same chairperson throughout the Northern Territory) has made a determination, whether consistent with staff recommendation or not, it carefully sets out in considerable detail the reasons for its decision. This makes the reasoning for determinations both easy to understand, and readily applicable to subsequent applications.

Other Jurisdictions

The Australian Capital Territory, Tasmania and Queensland have no such policy or codes which allow for any exemptions of telecommunications infrastructure, or the placing of certain types of infrastructure or activities on a ‘simpler’ planning path.

Queensland in particular is widely seen in the industry as the most difficult jurisdiction in which to deploy telecommunications infrastructure, where every new facility not captured by the Low-Impact Determination requires a development application and is therefore at the mercy of local government policies. Such policies focus almost solely on the protection of residential amenity and do not seek to strike a balance with the need for telecommunications infrastructure and the benefits afforded by it. As a result such policies are often poorly informed, poorly worded and have unintended and unrealistic consequences for deployment. Such policies are also sometimes at odds with other Council policies on ‘Smarter Cities’ and other programs, within which reliable access to data and information is highly regarded.

Suggested Exempt and Complying Development for South Australia

Based on the experience in New South Wales and Victoria in particular, it is considered reasonable that South Australia also consider legislation that allows for particular telecommunication facilities to be either exempted from approval (likely to form an extension of what is permitted as a ‘Low-Impact Facility’) or, subject to performance criteria, require only a complying development application.

Some suggested exemptions and complying development is listed in Annexure B.
8. SUGGESTED CHANGES AS PART OF SA PLANNING REFORMS

The Planning, Development and Infrastructure Act 2016 (The PDI Act), was assented to in April 2016. It came into operation (in part) on 1 April 2017. There are transitional plans/provisions for the ongoing implementation of the Act, which will include the proclamation of, and the bringing into operation of related Regulations and The Planning and Design Code. The latter is intended to be ‘written in plain language, focused on design outcomes that can be tailored to address local character needs’\(^\text{16}\). It is proposed that the full effect of the new system be operational by 2020.

As can be seen from the discussion and analysis above, the process for the assessment and approval of telecommunications facilities in South Australia is cumbersome, costly and protracted (time-wise). The process driven system ignores the reality of discrimination against carriers, and it amounts to Constitutional inconsistency (when compared with the exemptions, exclusions and assessment processes set out in the Development Act and Regulations for other essential infrastructure providers), while at the same time creating a confusing policy setting for third parties and communities.

The significant amount of time spent by the various Courts considering these matters has resulted in a consistent judicial approach and has sent a clear message to local government planners and assessment panels.

Over the years 1998 – 2018, the rapid increase in mobile telephony usage has given rise to an evolution in handset technology and capability further driving the need for service delivery. However, the roll-out of infrastructure capable of delivering effective and efficient services has been unnecessarily fraught.

This is partly because unlike other more topographically dynamic cities, Adelaide is relatively flat, and is hindered by an historical pattern of town planning that created mass residential areas, which are generally deemed other than ‘preferred’ for the development of Telecommunication Facilities\(^\text{17}\).

The need for line of sight connection between a Telecommunication Facility (be that a supporting structure for an antenna atop a building, or a monopole) and mobile phone requires (in broad terms), a Telecommunication Facility for each Carrier that is proximate to the area of need.


\(^\text{17}\) Ministerial / Planning SA Guidelines / DPA
Previous policy references to a desire for the use of ‘sculpture and art’ has proven over time not to be practical, useful or feasible, with the ‘dressing up’ of structures only adding to the overall bulk which tends to draw more attention to the structure than would otherwise be the case. Such treatments also add very significantly to costs and as ‘beauty is in the eye of the beholder’ agreement on a suitable and appropriate treatment is often fraught.

Further, such design work is generally incompatible with the increase in equipment over time and collocation is extremely problematic, with the aesthetics of the structure’s disguise losing integrity. In the industry’s experience, the screening of a structure in such a way does not usually allay the concerns of community members or those it is nearest to.

Discussion noted in the many cases dealt with by the Courts over the past 20 years recognise these TF requirements, the appropriate process for assessment of TF’s and the potential discrimination ‘finding’ to be made should future laws conflict with the strict wording for telecommunications facilities in the Commonwealth Act. To the extent that future legislative provisions are inconsistent with the dictate of the *Telecommunications Act*, those new provisions would be invalid and have no job to do.

It is also obvious that the State’s position is that there is a need for this essential infrastructure for the good of the State; the opportunities it can provide and the wellbeing of the economy. It is not clear at this time how essential infrastructure which already enjoys a raft of exemptions and ‘special’ treatment, such as electricity, gas and railways, will translate across to the new planning system but it would expect to be relatively unchanged and with no retrograde steps.

Although not available at the time of writing, the discussion paper soon to be released on the *Productive Economy* will need to address the need for essential infrastructure, including telecommunications and this will lead to the devising of a number of State Planning Policies to inform the final Planning and Design Code.

As part of the upcoming legislative changes, the State should:

- Make an appropriate policy declaration that telecommunications infrastructure is considered essential infrastructure;

- Incorporate all telecommunication facilities policy provisions into the ‘Infrastructure’ module (with appropriate wording and additions), dispensing completely with the separate telecommunications facilities module currently in use, and

- Include wider use/acknowledgement of the definition of ‘telecommunications facility’, tying it to the Commonwealth definition.
Options for the policy approach to telecommunications infrastructure assessment and approval include:

- Introducing a range of exempt and/or ‘not development’ designations for telecommunications facilities as well as a broad range of complying designations, subject to certain performance and siting criteria. This might include a combination of facility height, zoning and the type of facility;

- Ensuring there are no zones where telecommunications facilities are prohibited or non-complying; and

- Ensure there are no proximity-related policies which unnecessarily restrict or constrain the placement of telecommunications facilities so as to ensure the community can be adequately served – that is, all proposals should be assessed on the individual merits and should have applicant appeal rights attached.

In short, South Australia should follow the lead of both New South Wales and Victoria, both of which now have provisions to accommodate and support timely and effective development of telecommunications facilities in areas of need.

In an effort to move toward ‘equivalence’ with the development of other forms of essential infrastructure, South Australia should consider removing Councils as the relevant authorities in conjunction with provisions that enable all applications to be assessed by the State. This would underscore the importance telecommunications infrastructure and provide consistency across all telecommunication facility assessments.

The State should also give careful consideration to its role as landowner and the potential provider of acceptable solutions for the siting of telecommunications infrastructure. Currently, the largest custodian of Government-owned land, the Department of Environment and Water, has no standard agreement with the carriers for the use of Crown land and instead relies on an annual licence which is not a viable option.
9. CONCLUSION

As is clear from the information and analysis set out above, much has been tried, tested and learnt by the carriers, local government and the community over the last twenty years or so with respect to telecommunications. The ERD Court in particular has helped to create a comprehensive set of judgments, that in recent years have remained consistent in approach, and appear to have dealt with most if not all of the practical applications of the existing State telecommunication policy.

However, it was the DAC v 3GIS decision of the Supreme Court of South Australia which amounted to the watershed moment that paved the way for the proper approach to the assessment of telecommunications facilities. The 3GIS decision remains the firm authority on which applications are proposed, assessed and determined. In some ways it was fitting that a decision by the State’s Development Assessment Commission (and not a Council) provided the opportunity for the Supreme Court to rule on a number of very important matters.

Over that same time, Councils and their planning departments have sought to apply those learned lessons and directions from the Courts resulting in recommendations for approval that do not always meet the (sometimes ill-informed) expectations of the members of the public, thereby placing Council Assessment Panels under duress.

Community members can become frustrated that they are invited into a process that, unbeknown to them, is bound by legal precedent flowing from outcomes in the ERD. While these outcomes are proper and correct, little is achieved for the community by having the development assessment process played out in a ‘normal’ fashion at a local government level. It would be better, based on the discussions above, for the process to be taken up within the SCAP and removed from Council consideration.

This assessment process all occurs against a backdrop of continuing growth in the demand for service and a continuing decline in the use of landlines.

What is clear from all of what has been learned over 20 years is:

- The carriers have an on-going requirement to construct new facilities to keep up with demand and deploy new technologies;

- The carriers have a limited ability to deploy ‘low-impact facilities’ in South Australia generally but particularly across the suburbs of Adelaide;

- If carriers perform their site selection investigations with appropriate levels of diligence; are clear in their radio-frequency/technical objectives, and can properly articulate these objectives during the course of development application, there is little Council can do apart from conditioning various aspects of the facility’s appearance (such as colours, finishes, screening and landscaping);
• Carriers provide a relatively high level of information (some might say an onerous amount), particularly as a result of concerns raised through public notification, but this rarely changes the outcome;

• No Council has successfully defended a refusal of a telecommunications facility since 2005 and since the DAC v 3GIS decision this likelihood has diminished further;

• No third-party appeals have been successful in the ERD Court – such appeals simply add cost and delay to an otherwise valid approval, as well as creating disappointment for the appellant.

The current South Australian Council assessment processes do not represent an efficient and economic system, particularly where the State is acknowledging the need for high quality and reliable access to telecommunications to drive its economy into the future. In other words, the State legislative processes are not in accordance with the State Strategic Plan policies. There is no practical or functional difference between telecommunications and other forms of public utilities, the latter which have for many years past enjoyed a simplified approval pathway because of their essential nature. Council and communities accept (or perhaps don’t even think about) the need for electricity, gas, sewer and railway systems.

With the evolution of, and exponential uptake in the use of mobile telephony, together with the reliance on connectivity over a range of devices (i.e. computers, iPads etc), it is now generally accepted that infrastructure must be in place to ensure reliable service provision.

There is no practical or public benefit in forcing the approval of telecommunications facilities down the (past) ‘normal’ development assessment pathway. It is time for a new ‘normal’ along the lines of that set out in Victoria and New South Wales, but extended further by removing Councils from the mix altogether. State based infrastructure assessment occurred only because of a regulatory change at the Commonwealth level in 1997, which for the first time moved some of the responsibility to the States and Territories.

In the following 21 years some States have sought to exempt a greater range of facilities in certain circumstances in recognition of the essential infrastructure nature (and the dictates of the Commonwealth Telecommunications Act), while other States have done nothing. South Australia provides a small and narrow number of exemptions, and then only because a form of them historically existed in the Development Regulations for radio antennas, masts and the like.

It is time for a change where the new planning regime allows a range of facilities to be complying or exempt from assessment subject to a range of design and siting criteria (such as occurs in NSW and Victoria), with anything outside those criteria being subject to limited public notification and devoid of rights of appeal.

There should be no zones where the equivalent of ‘non-complying’ can be applied to telecommunications infrastructure, and serious consideration should be given to making the
State Commission the sole ‘relevant authority’, which would simplify the process for all concerned – including local government.

When enacted, this new approach will properly recognise the important role of telecommunications in South Australia; the need for timely, economic and efficient deployment of telecommunications infrastructure and ensure the State is well placed to leverage growth and opportunities through widespread and reliable mobile access.
ANNEXURE A

INFRASTRUCTURE POLICY MODULE
INFRASTRUCTURE POLICY MODULE

OBJECTIVES

1. Infrastructure provided in an economical and environmentally sensitive manner.

2. Infrastructure, including social infrastructure, provided in advance of need.

3. Suitable land for infrastructure identified and set aside in advance of need.

4. The visual impact of infrastructure facilities minimized.

5. The efficient and cost-effective use of existing infrastructure.

PRINCIPLES OF DEVELOPMENT CONTROL

1. Development should not occur without the provision of essential infrastructure, including:

   (a) electricity supply
   (b) water supply
   (c) drainage and stormwater systems
   (d) waste disposal
   (e) effluent disposal systems
   (f) formed all-weather public roads
   (g) telecommunications services (including mobile telecommunications services)
   (h) social infrastructure, community services and facilities
   (i) gas services.

2. Development should only occur only where it provides, or has access to, relevant easements for the supply of infrastructure.

3. Development should incorporate provision for the supply of infrastructure services to be located within common service trenches where practicable.

4. Development should not take place until adequate and coordinated drainage of the land is assured.
Development in urban areas should not occur without provision of an adequate reticulated domestic quality mains water supply and an appropriate waste treatment system.

In areas where no reticulated water supply is available, buildings whose usage is reliant on a water supply should be equipped with an adequate and reliable on-site water storage system.

Urban development should not be dependent on an indirect water supply.

The visual impact of infrastructure facilities should be minimised, including through the use of appropriate materials, finishes and design and incorporating landscaping for screening.

In urban areas, electricity supply serving new development should be installed underground.

Essential infrastructure, including access roads and tracks, should be sited on areas already cleared of native vegetation. If this is not possible, their siting should cause minimal interference or disturbance to existing native vegetation and biodiversity.

Buildings and structures associated with essential infrastructure should be grouped with non-residential development where possible.

Telecommunications facilities should:

(a) be located to meet the communication needs of the community

(b) be located primarily in non-residential zones

(c) where technically feasible, be positioned or collocated with other infrastructure.

Infrastructure located in residential zones should be sited and designed to minimise visual impact by:

(a) using existing buildings and vegetation for screening

(b) where possible, incorporating the facility within existing structures that may serve another purpose and retaining that structure’s character.

Electricity infrastructure, telecommunications facilities and other similar infrastructure should be sited and designed to minimise impacts on the amenity, character and settings of heritage items, areas and places.
ANNEXURE B

LIST OF SUGGESTED EXEMPT/COMPLYING DEVELOPMENT
Exempt Facilities

➢ A temporary facility, not exceeding 25 metres in height and not existing on the land for more than 4 months in any 12 month period.
➢ Replacement of a tower or facility associated with a tower to enable collocation
➢ Extension of a tower or facility to enable collocation
➢ A telecommunication facility located within a road or rail reserve, not exceeding 25 metres in height

Complying Facilities

➢ New small cell structures up to 10 metres in height in any zone
➢ New monopoles up to 15 metres in height where located in a centre, commercial or like zone and more than 15 metres from a residential zone
➢ New monopoles up to 25 metres in height where located in a centre, commercial or like zone and more than 25 metres from a residential zone
➢ New monopoles up to 40 metres in height where located in an industrial or rural zone and more than 50 metres from a residential zone
➢ New monopoles and towers up to 50 metres in height where located in a rural zone and more than 100 metres from a residential zone