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Telecommunications facilities

The circular provides information about recent amendments to State Environmental Planning Policy (Infrastructure) 2007 and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 associated with telecommunications facilities.

Introduction

On 16 July 2010, the State Environmental Planning Policy (Infrastructure) 2007 (“the SEPP”) and the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 were amended to streamline planning approvals for various types of telecommunications facilities including broadband.

Amended provisions

The amendments set out consistent planning provisions applying across the State for the installation or upgrade of telecommunications networks for government, industry and households.

The amendments:

- outline new exempt and complying development types
- require the consideration of guidelines for development of telecommunications facilities under Part 4 and Part 5 of the *Environmental Planning and Assessment Act 1979*
- make savings and transitional arrangements

New exempt and complying development types

The new classes of exempt and complying development have been developed for the telecommunications facilities shown in the following table.

The SEPP includes requirements and development standards which must be met for these types of development to be exempt and complying development.

Where development is complying development, complying development certificate conditions have been specified.

	Exempt and/or Complying Development
1	Subscriber and non-subscriber connection to a telecommunications network deployed by means of radio or satellite dish (including a radiocommunications dish)
2	Panel antenna, yagi antenna or other directional antenna
3	Omnidirectional antenna
4	Microcell installation
5	In-building coverage installation (picocell installation) for the purposes of improving broadband coverage to wireless technology users or the coverage of mobile phone users operating inside the building
6	Equipment installed inside a structure
7	An extension to a tower on land other than in residential land use zones
8	Replacement of a tower
9	New towers in certain rural and industrial zones (complying development only)
10	Underground housing for telecommunications facilities
11	Above-ground housing for telecommunications facilities
12	Underground conduit or cable including subscriber connection and fibre-optic cable for broadband
13	Above ground cable for subscriber connection or fibre cable for broadband
14	Conduit or cable within a building for subscriber connection or fibre-optic cable for broadband
15	Boring or directional drilling in connection with a telecommunications facility
16	Public payphones
17	Installation and use of telecommunications facilities for use in an emergency, or to provide assistance to an emergency services organisation
18	Installation and use of temporary telecommunications facilities
19	Ancillary facilities to a telecommunications facility
20	Maintenance activities in relation to a telecommunications facility
21	Installation and use of permanent transmission and power cabling for temporary telecommunications facilities for recurrent events

Guideline

The Department of Planning has prepared a Guideline to:

- (a) provide a guide to the State wide planning provisions and development controls for telecommunications facilities in NSW contained in the SEPP;
- (b) provide guidance to assist the facilitation of the roll-out of broadband in NSW.

Principles

Principles for the design, siting, construction and operation of telecommunications facilities that apply to proposed telecommunications facilities in NSW have been developed and are contained in this Guideline.

The detailed principles are under the following broad headings:

Principle 1: A telecommunications facility is to be designed and sited to minimise visual impact

Principle 2: Telecommunications facilities should be co-located wherever practical.

Principle 3: Health standards for exposure to radio emissions must be met

Principle 4: Minimise disturbance and risk and maximise compliance.

Development with or without consent

Before carrying out development under clause 114 or 115 of the SEPP the principles in the Guideline must be considered. The Guideline has been gazetted for the purposes of clause 114 and 115 of the SEPP.

These principles should be taken into consideration when determining and carrying out proposals for all types of telecommunications facilities in order to follow best practice.

The Guideline sets out best practice conditions of consent for the use of councils when determining applications for telecommunications facilities.

Relationship with Commonwealth Legislation

The Guideline provides an explanation of the relationship of Division 21 of the SEPP with the Commonwealth *Telecommunications Act 1997 (Telco Act)*. It deals with the relationship between NSW planning law and the Telco Act, and provides a copy of the Commonwealth *Telecommunications (Low-Impact Facilities) Determination 1997* which the exempt and complying provisions in the SEPP complement.

Various codes have been developed by the telecommunications industry through the Australian Communications Industry Forum (ACIF), which is now called Communications Alliance Ltd. Where these codes are registered

under Part 6 of the Telco Act the code becomes mandatory on all telecommunications carriers. Refer to list of registered codes on the Australian Communications and Media Authority (ACMA) web site: www.acma.gov.au.

A list of ACIF codes is available at <http://www.commsalliance.com.au>

Health and Safety provisions

The Guideline also outlines the background to the health standards in Principle 3 of the Guideline.

Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) is the Commonwealth body charged with the responsibility for establishing standards that protect the health and safety of the community, including the Radiation Protection Standard.

An Appendix in the Guideline provides results of a number of surveys undertaken by ARPANSA of environmental radiofrequency electromagnetic energy levels arising from mobile phone base stations. The results show that actual measured values, including 'cumulative' effect were much lower than levels permitted by the Radiation Protection Standard.

A separate Appendix in the Guideline provides diagrams of the extent of radiofrequency hazard fields associated with different types of mobile phone base stations located on a rooftop, monopole and a microcell installation on a light pole.

Where the proposed public mobile phone network facility is complying development, the SEPP requires that the principal certifying authority be provided with:

- (i) in the case of development that will produce electromagnetic radiation – a report in the format required by ARPANSA that shows the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Commonwealth and Media Authority and the Electromagnetic Radiation Standard, and
- (ii) a report showing compliance with the Australian Communications Industry Forum's Code (ACIF C564:2004).

This condition is also included in the recommended set of standard conditions of consent in the Guideline, where a development application is submitted to a Council.

Further information on a range of issues relevant to electromagnetic energy and the placement of telecommunications towers is at <http://www.arpansa.gov.au/>.

Court Guidance

The Guideline also states that it is instructive to consider relevant Land and Environment Court cases, such as *Telstra Corp Ltd v Hornsby Shire Council* [2006] NSWLEC 133. This case dealt with the question of ecologically sustainable development and application of the precautionary principle in the case of radiofrequency electromagnetic energy (RF EME).

In this case Telstra proposed to address inadequate mobile coverage in the suburb of Cheltenham by building a mobile base station. Hornsby Shire Council refused the application and Telstra appealed to the Land & Environment Court of NSW and the Court upheld the appeal.

The Court addressed the following questions: What is the precautionary principle and how is it to be applied when thinking about public health and safety and the environment?

The Court outlined the basic concept of ecologically sustainable development and its applicability to the determination of development applications. It then focused on the precautionary principle and its applicability to the proposed development in this case.

The decision in the case is explained in the "Land and Environment Court Reporter" Issue 11, April 2006 published by the NSW Local Government & Shires Associations. This publication states:

Issues: Among the issues raised by council and resident objectors was that Telstra had not adequately demonstrated that the development would not cause a level of electromagnetic radiation that would impact on the health of persons in the locality...

Determination: In this case, the first condition precedent for the application of [the] precautionary principle, that there be threats of serious or irreversible environmental damage, was not satisfied.

His Honour (Preston CJ) found that the levels of RF EME emitted from the proposed base station would easily comply with the Australian Standard RPS3 and the risk of any harm to the health and safety of people or the environment caused by exposure to such extremely low levels of RF EME was negligible. Accordingly, there was no basis on which the precautionary principle could be applied to the proposal.

His Honour noted that the same conclusion had been reached by other courts and tribunals dealing with other proposed mobile phone base stations and antennas which emitted RF EME that complied with the relevant regulatory standards.

Preston CJ stated that the conclusion was a direct consequence of the fact that a precautionary approach has already been adopted in the standard setting process, the terms of the Australian Standard RPS3, the design and location of the proposed base station, the equipment to be provided, the operation of the equipment, the application of the Standard to the RF EME generated from the base station, and the likelihood of actual RF EME being significantly less than predicted RF EME.

Other amendments

The amendment also clarify the types of aerial, antenna or communication dish developments which can be carried out as exempt development under the Exempt and Complying Codes SEPP.

The amendment repeals clause 17 related to satellite dishes in SEPP No 4 – Development Without Consent and Miscellaneous Exempt and Complying Development.

Further information

The draft exempt and complying provisions were exhibited for public comment in June 2009. Issues raised in submissions were taken into consideration in finalising the provisions.

State Environmental Planning Policy (Infrastructure) 2007 and State Environmental Planning Policy (Exempt and Complying Codes) 2008, as amended, are available from the NSW legislation website at www.legislation.nsw.gov.au.

The NSW Telecommunications Facilities Guideline including Broadband (Department of Planning 2010) is available from the Department's website at www.planning.nsw.gov.au (see Register of Development Assessment Guidelines).

This and other planning circulars are available from the Department's website at www.planning.nsw.gov.au/circulars.

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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