# Public hearing into Senator Bob Brown's Private Senator's Bill

## Questions taken on notice at the hearing on 12 April 2012.

1. How do local telecommunications plans required by NBN Co interface with local councils' planning schemes and development proposals?

In response to this question the following advice was received from state government associations.

- The Local Government Association of South Australia advises that most information required by NBN Co is readily available from councils in SA, with the possible exception of Indigenous heritage areas, which are generally not represented on Councils Development plans, but which are kept on a register held by the SA State Government. In 2001 the Minister for Planning initiated an amendment to facilitate consistency across council boundaries – the SA Planning Policy Library (from which all new Development Plan policy must be selected) includes a module on Telecommunications Facilities. Where telecommunications facilities require a Development Approval (DA), councils may be required to amend the policy or zoning within their Development Plans, a process which is extremely slow and which may result in significant delays to the rollout of telecommunications infrastructure.

- Queensland advises that the situation is similar in Queensland, with most information readily accessible and available from councils, except Indigenous heritage areas. Councils use NBN Co's checklist and can provide the information required by NBN Co in a short time. However, it has been identified that telecommunications providers in general have been experiencing difficulty with infrastructure provision in new developments. Anecdotal evidence suggests development has been conditioned inappropriately for telecommunications infrastructure by local government. To rectify this issue, the Broadband Today Alliance and LGAQ have discussed preparing a short guideline for common scenarios on how to condition development for telecommunications.

- Queensland is in a state of transition with its planning system, whereby a new planning scheme framework (template) has been developed, but not yet fully implemented by local government. The new framework provides a definition for "telecommunications" and identifies an appropriate zone category, however it will be up to each local government to determine, through their strategic planning process, the level (track) of development assessment, performance and acceptable outcomes. It is considered unlikely that local governments will prepare a plan specific for telecommunications, this type of information will simply be included as part of their planning schemes.

2. Provide information on differences (impacts) on a state by state basis – what does this mean?

Each state may have additional provisions or modifications to State planning laws or Commonwealth provisions in relation to certain telecommunications facilities.

- For example, Victoria has a ***Code of Practice for Telecommunications Facilities in Victoria***, which interacts with Commonwealth legislation and state planning schemes. The Code is available at

the following link, which also includes a useful diagram on page 1. (http://www.dpcd.vic.gov.au/__data/assets/pdf_file/0004/41827/Telecommunications__reissue_2004.pdf). A telecommunications facility which is not exempt under the Commonwealth Telecommunications Act or the Determination and which does not meet the requirements of the Telecommunications Code of Practice, requires a planning permit in Victoria. It should be noted that there is a willingness to ensure the code exempts those aspects of the NBN roll out requirements deemed to be low impact.

- In NSW, the ***NSW Telecommunications Facilities Guideline including Broadband*** provides statewide planning provisions and development controls for telecommunications facilities in NSW under the State Environmental Planning Policy Infrastructure 2007 (SEPPI 2007) and to assist the rollout of broadband (http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=dC4Bz58T1zg%3D&tabid=460&language=en-AU). It provides for the development of further telecommunications facilities that do not require consent. A diagram outlining which type of approval is required can be found on page 6. Further information on provisions for the rollout of broadband in NSW can be found at http://www.planning.nsw.gov.au/PolicyandLegislation/Telecommunications/tabid/460/language/en-US/Default.aspx

- In SA, the state local government association has provided the State Government's refined ***Planning for telecommunications facilities*** (attached below). Changes to State law in 2000 prevent the manipulation of State law in combination with Commonwealth "low impact" provisions and reduce exclusions from the definition of "Development", as well as siting and size limitations.

- In WA, unless exempted by legislation, telecommunications facilities in WA require planning approval. Exemptions are for facilities classified as LIFD; for inspection and maintenance; for a temporary defence facility; and under a Facilities Installation Permit. Provisions are specified in the ***State Planning Commission Planning Policy No. 5.2: Telecommunications Infrastructure*** (http://www.planning.wa.gov.au/dop_pub_pdf/SPP5_2.pdf) and ***Guidelines for the Location, Siting and Design of Telecommunications Infrastructure*** (http://www.planning.wa.gov.au/dop_pub_pdf/Telecommunications.).

- In Queensland the legislative framework is in transition, and the situation is that existing Federal legislation is utilised for telecommunications facilities. Ultimately, the role of local government is to determine how Telecommunications facilities are assessed, if there is no applicable Federal legislation. The transitioning associated with planning in Queensland is particularly focused on reducing "red-tape" and unnecessary regulation of development. This means that only development which is considered to have a significant impact, is 'out of sequence', or potentially in an inappropriate zone, will be flagged for scrutiny and assessment. Whilst increasing the opportunity for the public to be consulted on new telecommunications infrastructure is appropriate inprinciple, the LGAQ has a significant concern that rescinding all telecommunications provisions, such as those contained in the LIFD, will be counterproductive to Queensland's regulation reduction. The LGAQ does not believe that the impact of *all* telecommunications infrastructure development is significant to warrant development

assessment, and particularly public consultation, nor does local government in Queensland have the capacity or resourcing to achieve this. Further, Queensland does not have legislation that would "fill the gap", should the LIFD provisions cease.

3. Detail of Tasmanian information/other examples – ie new poles
   - Requiring a DA for every new pole as the NBN rolled out in local streets, required hundreds of letters to be sent out to neighbours for a few poles (Kingborough, Tas and Meander Valley, Tas. examples given). Not one objection was lodged, so council would consider the time was not well spent on this task.
   - The public can comment only during the statutory process period of a DA. Comments may not deal with visual issues or health matters. Health concerns are outside council's control and need to be better addressed. Carriers should be required to take a more strategic approach, and be able to justify the future location of towers in a more publicly accountable way – the regulation should be focussed on carriers, rather than impose relatively meaningless approval processes onto councils (Kingborough, Tas).
   - Despite concerns by council and the public re a low impact facility in Kingborough, the carrier (Telstra) ignored the concerns and proceeded with an attitude which was not open to a compromise position.
   - The base position would be that controls should be no weaker under any amendments that it currently stands under the Act. Visually, the bar should be higher in heritage areas (Hobart, Tas). Retro-undergrounding of overhead infrastructure should be the long-term aim (funded by all service providers).
   - Removal of the LIFD exemption would allow councils to have a say over the visual impacts of such infrastructure – eg. the Quadrant tower is cited as an example of a telecommunications infrastructure which has created an adverse visual impact on the Ulverstone CBD as it is an overly prominent structure because of its height and relative isolation (Ulverston, Tas).
   - The planning system should not be used as a vehicle for assessing (and objecting to) telecommunications infrastructure because of potential health impacts. Local Government does not have the expertise to make such calls and Senator Brown's proposed change would bring such debates into the Local Government arena. Apart from the lack of an ability to regulate the visual impacts (which maybe/should be subject to a visual impact assessment) the centralised assessment model for low impact infrastructure (ie status quo) has worked fine to date. (Ulverston, Tas).
   - Council projects up to $1m are exempt from planning permit requirements in Victoria. Potential exists for a council to enter into an agreement with the NBN Co to undertake agreed works to facilitate the roll out, however permit assessment and notice are not being managed on a pole by pole basis which appears overly cautious. (Towers, however, are proving controversial and need to be dealt with one by one.)

4. Has local government done any research on health risks of radiation? Has there been any state association research or review?

Health issues have been a recurring theme for Hobart Council. Hobart Council wrote to the Minister in 2011 and advises that the State Government response on the issue tends to be the status quo "in the absence of evidence". Hobart City Council commissioned research from Prof Andrew W Wood

PhD, Professor in Biophysics(Brain and Psychological Sciences Research Centre, Swinburne University of Technology) on high voltage transmission lines in proximity to residential development (as opposed to mobile phone towers).

The Local Government Association of South Australia advises that it has not conducted any research and is guided by the research undertaken by the Federal Government. The SA Health Commission is of the view that current research has not established any adverse health effects from exposure to low levels of RF radiation and does not consider it appropriate for Development Plan policies to require planning authorities to assess potential public health impacts (refer SA ***Planning for telecommunications facilities)***. Victoria, similarly, advises that it has not conducted any research, nor is aware of any Victorian councils which have done so.

5. Provide the committee with a copy of the NBN Best Practice Guide (http://www.alga.asn.au/site/misc/alga/downloads/publications/NBN_Co_ALGA_Ovum_Report.pdf)

6. Provide the committee with a copy of Inter-Governmental Agreement (IGA) on cost shifting (http://www.lgpmcouncil.gov.au/publications/files/Booklet_with_parties_signatures.pdf)

7. Additional Question from Senator McKenzie. Your submission mentions that Councils have been advocating for more involvement in the process for some time. What about the potential cost burden on them of this legislation, particularly in relation to processing planning approvals?

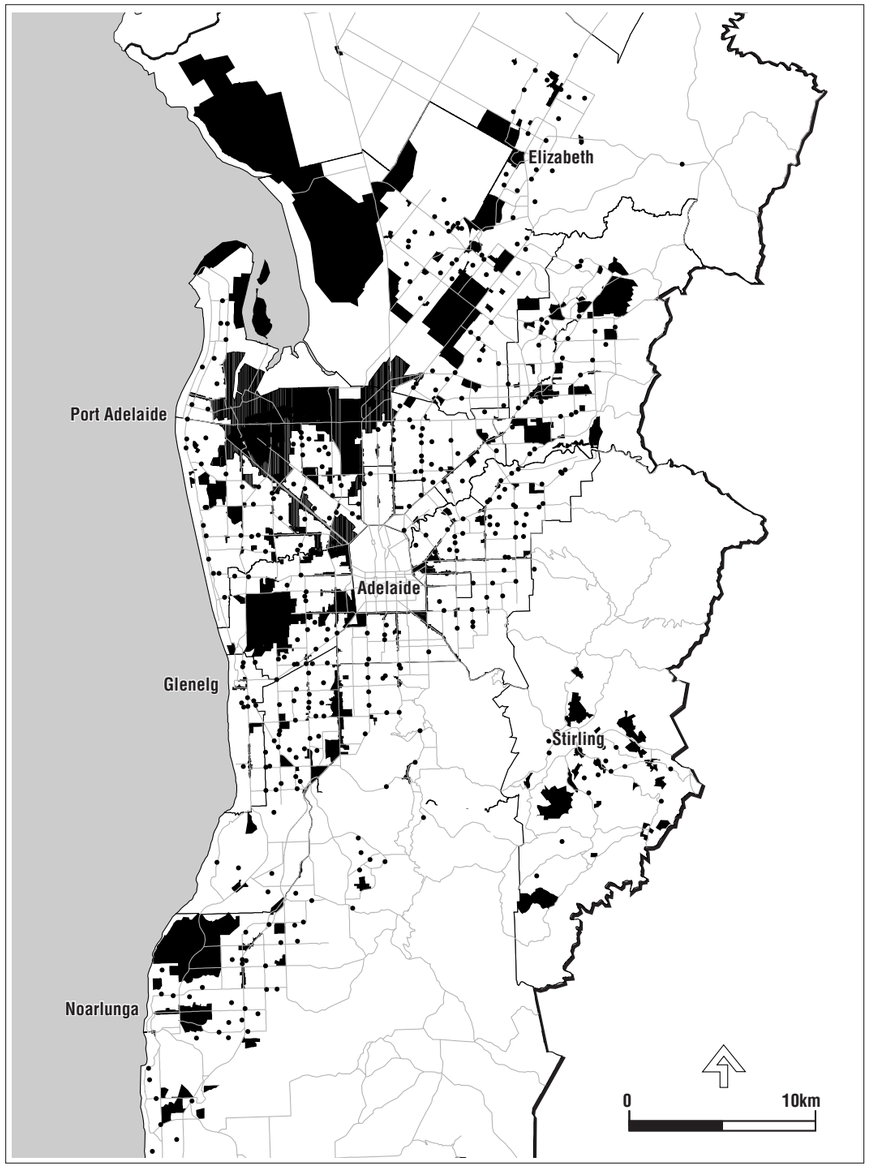
   Councils believe that the planning process is the appropriate avenue for the installation of telecommunications facilities, in order that the facilities are designed and installed in a manner which protects the visual and environmental character of local areas. However, this needs to be balanced with an efficient rollout of these facilities in a timely and cost-effective manner. With the removal of LIFD exemptions, all telecommunications facilities will be subject to a planning approval process, which will require significant additional resources and additional funds to be provided to local government and/or state governments. Councils would be unable to perform the additional workload required, particularly during the peak rollout of the NBN where 6,000 premises per day are expected to be connected, without considerable additional resources.

   The comments above from our state association in Queensland are a good summation of the attitude to this question, namely… whilst increasing the opportunity for the public to be consulted on new telecommunications infrastructure is appropriate in principle, the LGAQ has a significant concern that rescinding all telecommunications provisions, such as those contained in the LIFD, will be counterproductive to Queensland's regulation reduction. The LGAQ does not believe that the impact of *all* telecommunications infrastructure development is significant enough to warrant development assessment, and particularly public consultation, nor does local government in Queensland have the capacity or resourcing to achieve this. Further, Queensland does not have legislation that would "fill the gap", should the LIFD provisions cease.

   As a matter of principle, however, the integrity of the planning process should not be compromised by resource constraints on local government. Where local government has an

appropriate regulatory responsibility delegated to it under state legislation, then sufficient resources and capacity should be available to councils to carry out those responsibilities.

## Telecommunications facilities - preferred areas for metropolitan Adelaide




Preferred Areas
Preferred Areas (not to scale)
Metropolitan Adelaide boundary
Roads
Local Government Area boundaries

### Note:

1. Commonwealth law allows “low impact facilities” to be erected "as of right" regardless of any State law. “Low impact facilities” can therefore be established anywhere.
2. Facilities that are not “low impact” will also need to be developed outside the preferred areas in order to secure efficient coverage. In these cases, approval will be based on assessment against the relevant Development Plan policies.
3. Preferred Areas in Adelaide City Council not shown.

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Department for Transport,
Urban Planning and the Arts

# Planning for telecommunications facilities

The State Government has refined the policies under which mobile phone base stations and other telecommunications facilities are established.

This Fact Sheet provides an overview of the effect of the policies.

## What are the State Government’s goals for telecommunications facilities?

The State Government supports the efficient and effective establishment of telecommunications infrastructure to meet the economic and social needs of the community. However, this must be achieved in a manner that minimises impacts upon the character and amenity of local areas – particularly residential areas.

To achieve this, the Government requires telecommunications facilities to be established in a manner and location that minimises impacts upon local communities. This will require careful design and siting of proposals so that visual impacts are minimised.

Facilities should be located in industrial, commercial, centre and other similar areas in preference to residential areas. Wherever possible, facilities should be co-located (that is, make shared use of existing structures). A high standard of design is required in all circumstances.

## What is the effect of Commonwealth law?

**The Commonwealth Government has legislated to provide that infrastructure determined as being a "low impact facility" can be established "as of right" (ie it is outside of State control).** It is expected that, wherever possible, carriers will utilise Commonwealth law to establish new "low impact" infrastructure without reference to State law.

In addition to "low impact" facilities, Commonwealth law can also provide that other types of telecommunications facilities may be exempt from State approval.

The State Government has no control over Commonwealth law. Any inquiries relating to the operation of Commonwealth law should be directed to the relevant Commonwealth agency.

## What is the effect of State law?

Where a facility is not exempted from State law by the Commonwealth, it will require approval under the Development Act 1993 if it is defined as "development". Facilities that involve building work (other than minor works) and/or a change of land use will require approval under the Development Act.

This requires that an application be lodged with the relevant authority (usually Council) and considered and determined based on an assessment against the relevant Development Plan. It is therefore important that Development Plan policies specify the preferred location and design of telecommunications facilities as a basis for assessment.

## What are the current changes to State law?

On 31 August 2000 changes were made to the Regulations under the Development Act 1993 to:

- prevent the manipulation of State law in combination with the Commonwealth "low impact" provisions in a manner that could result in significant structures being erected without planning approval – for example, by preventing the multiple minor extension of existing structures;
- reduce the range of situations in which certain forms of masts, towers or antennae may be excluded from the definition of "development";

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- introduce size thresholds for satellite dishes to ensure that large dishes cannot be erected without planning approval (1.2m diameter in residential zones, 2.4m in other zones);
- ensure that subscribers in remote areas can be connected to the telephone network without the need to seek planning approval - in the same way that subscribers in urban areas are not required to seek approval;
- encourage new facilities to be located away from sensitive areas by nominating facilities in preferred zones as being public notification Category 1 (no notification required) or Category 2 (notice to adjoining owners required), depending on height – note that Councils have capacity to widen the scope of Category 2 notificiation by preparing Plan Amendment Reports; and
- ensure that non-government bodies providing public infrastructure are subject to the same planning requirements as government bodies.

Also on 31 August, a Ministerial Plan Amendment Report took interim effect across the State and amended all Development Plans to provide clear assessment policies requiring:

- reduced impacts on the character and amenity of local areas through sensitive design and siting;
- encouragement for co-location; and
- facilities be directed into industrial, centre, commercial and rural areas in preference to residential areas.

Councils wishing to "fine tune" these policies in a manner consistent with the general approach can seek Ministerial approval through the Plan Amendment Report process.

## What about public health impacts?

The SA Health Commission has advised: "The Health Commission considers that current research has not established that there are any adverse health effects to humans from exposure to low levels of RF radiation such as TV and radio towers or mobile telephones and their base stations, and such exposures are not considered to present a public health hazard".

The Australian Radiation Protection and Nuclear Safety Agency, in a recently published study, found that peak radiation levels from a number of mobile phone base stations tested over a period of time were significantly below maximum emission standards (www.arpansa.gov.au/mph_sys.htm).

In this context, it is not considered appropriate for Development Plan policies to require planning authorities to assess potential public health impacts.

However, the policy approach now in place seeks to direct telecommunications facilities into non-residential zones and areas – based on visual and amenity impacts – and will therefore serve to promote the separation of these facilities from living areas.

## What has not changed?

The policy changes do not affect the following existing requirements:

- facilities that are "low impact" under Commonwealth law can still be erected without any State or local government approval – this is a matter beyond State control;
- development approval will still be required for any facility that constitutes a change of land use – for example, a mobile phone base station on an existing residential property;
- policies applying in residential zones are unchanged – for example, where mobile phone towers were designated non-complying in residential zones, this remains the case; and
- public notification requirements for facilities in sensitive areas, facilities exceeding the nominated height, and facilities designated "non-complying" generally are unchanged.

## What does this mean for mobile phone towers?

The policy changes have increased the range of situations in which mobile telephone towers will require development approval. Any tower, mast or antennae which is visually prominent or involves a change of land use will require planning approval, based on assessment against the Development Plan.





However, it is necessary to allow the construction of masts or antennae of limited height where they are ancillary to an established use of land – for example, the construction of a television aerial or ham radio mast on a residential property, or the construction of a two-way radio mast on the site of a business premises. This is necessary in order to minimise unnecessary approval requirements and allow landowners the reasonable use and enjoyment of their land in line with their existing use rights.

To achieve these ends, towers, masts or antennae will now require planning approval under State law unless:

- there is no change of land use involved;
- it does not affect a State or local heritage place; and
- in metropolitan Adelaide - it is less than 7.5m if freestanding (reduced from 10m previously) or less than 4m (2 m in a residential zone) when attached to an existing building (current potential for multiple extensions eliminated); or
- outside metropolitan Adelaide – it is less than 10m if freestanding or less than 4m in total above an existing building (no change to existing situation).

Development Plan policies will encourage towers into centre, industrial, commercial and similar areas, and discourage them in residential, heritage and other sensitive areas.

Towers will be assessed "on merit" in centre, industrial and commercial zones – non-complying lists have been changed where necessary to ensure that towers are not non-complying in preferred zones.

Policies applying to mobile phone towers in residential zones, heritage zones, Hills Face Zone and other sensitive areas have been tightened.

## What is the situation in the Hills Face Zone?

The Hills Face Zone is recognised as a vitally important landscape backdrop for metropolitan Adelaide. To ensure that masts, towers or antennae are not built in the Zone without appropriate assessment and approval, a more restrictive set of approval requirements have been imposed.

Any freestanding mast, tower or antennae will require approval in the Hills Face Zone.

## How can I have my say?

Written submissions are invited on the draft documents by **31 October 2000**.

Submissions should be directed to:

The Presiding Member
Development Policy Advisory Committee
GPO Box 1815
ADELAIDE SA 5001

The Committee will hold a public hearing on the Plan Amendment Report at the Grosvernor Hotel, 125 North Terrace, Adelaide on 9 November 2000 commencing at 7.00pm. If you would like to be heard by the Committee, you should indicate this in your submission on the draft Plan Amendment Report.

## Where can I get further information?

The full detail of the policy changes are set out in a package which includes:

- the amendments to the Regulations under the Development Act 1993;
- the draft Plan Amendment Report “Telecommunications Facilities Statewide Policy Framework”; and
- the draft “Planning for Telecommunications Facilities” Planning Bulletin.

Copies of these documents are available for viewing and purchase at:

Planning SA
Level 5, Roma Mitchell House
136 North Terrace, Adelaide

or for viewing at the planning section of your local Council.

You can view the draft documents on Planning SA’s website at **www.planning.sa.gov.au/telcom**, or telephone Planning SA on 8303 0741.