

9 November 2011

Standing Committee on Infrastructure and Communications  
Committee Secretary  
House of Representatives Standing Committee on  
Infrastructure and Communications  
Parliament House  
CANBERRA ACT 2600

By email: [ic.reps@aph.gov.au](mailto:ic.reps@aph.gov.au)

Dear Sirs

### **Inquiry into the Telecommunications Amendment (Enhancing Community Consultation) Bill**

We welcome the Committee's recently announced inquiry into the Telecommunications Amendment (Enhancing Community Consultation) Bill. In our view, the proposed amendments are long overdue in order to ensure that local communities are genuinely consulted in respect of the construction of telecommunication towers in their neighbourhoods.

#### **1. The Summer Hill Action Group**

We represent a group of concerned Summer Hill residents who formed the Summer Hill Action Group (**SHAG**) to oppose the construction of a 3G telecommunications tower (the **Tower**) at 28 Morris Street, Summer Hill, NSW 2130 by Telstra. The Tower, which was constructed in early 2010, is just 70 meters away from the Summer Hill Children's Centre and less than 500 meters away from two local schools and a kindergarten.

#### **2. Overview of our experience - Summer Hill**

Summer Hill is a small suburb in Sydney's inner west of considerable heritage significance. Many properties in Summer Hill are designated heritage properties and many others are in draft conservation areas or included in the new Draft Principal Local Environmental Plan for Ashfield. Summer Hill is part of the Ashfield municipality. Summer Hill has a commercial region of shops, a small shopping centre and a train station.

On 23 October 2009, a small group of Summer Hill residents received a to 'The Occupier' letter from Telstra regarding a 'proposal to install a Telecommunications Facility at 28 Morris Street, Summer Hill, NSW, 2130.' The letter included a copy of the notification to Ashfield Council. However these letters were not received by a number of key stakeholders, including the Summer Hill Children's Centre, Summer Hill Public School or St Patrick's Primary School.

On 6 November 2009, a further to 'The Occupier' letter from Telstra was received by a small group of residents regarding the Tower in response to 'concerns expressed' by some members of the community. It referred to a number of issues such as radiation and proximity to school and day care facilities, conceding that these issues had not been dealt with adequately at the outset.

On 20 November 2009, SHAG wrote to Mr Jon Mills, Urbis, the consultant appointed by Telstra to undertake the 'community consultation', raising our comprehensive objections to the Tower. This relevantly included the fact that Telstra had not complied with the Industry Code in that:

- a. Telstra had not taken a precautionary approach in respect of the proposal to build the Tower at 28 Morris Street;
- b. Telstra had not taken steps to minimize electromagnetic radiation to the public;

- c. Telstra had not acknowledged the likelihood of the area being a community sensitive location and therefore not avoided community sensitive locations including schools and childcare facilities;
- d. Telstra had not engaged in genuine community consultation nor had real regard to the outcomes of that community consultation in making its decision to proceed with the Tower; and
- e. Telstra had not taken into account the heritage significance of either the proposed site or the immediate environment.

On 18 December 2009, SHAG received a response to our letter from Urbis. Our further response to Telstra was sent on 21 December 2009. Telstra's final reply concluded that:

... if you have any further concerns regarding this matter should be addressed to ACMA.

### **3. Complaint to ACMA regarding breaches of the Industry Code**

SHAG was not satisfied that Telstra had complied with the Industry Code and request that the ACMA investigate Telstra's potential breaches of the Industry Code. Particular details of Telstra's breaches of the Deployment of Mobile Phone Network Infrastructure Code (the **Industry Code**) were provided to ACMA.

As you are no doubt aware, the Industry Code which is registered with the ACMA specifies that Telstra must take a 'precautionary approach' for the building and operation of radio-based telecommunications equipment. Site specific obligations under section 5.1.4 of the Industry Code on Telstra relevantly include:

- a. minimising electromagnetic energy emissions exposure to the public;
- b. avoiding community-sensitive locations;
- c. the outcomes of community consultation; and
- d. heritage significance.

These issues are dealt with individually below.

#### Minimising EMR exposure

*We submitted that Telstra had not had regard to the minimization of electromagnetic radiation (EMR) exposure to the public and thus breached clause 5.1.4(b) of the Industry Code.*

Telstra provided us with no information on how it intended to minimize EMR exposure to the more than the thousand children at the two local schools and two childcare/ kindergarten facilities by erecting the Tower at 28 Morris Street. Indeed, the placement of the Tower in a high density residential area within 450 meters from two schools, two childcare facilities and hundreds of homes appears antithetical to the obligation to minimize EMR.

#### Community sensitive location

*We submitted that Telstra did not have regard to the likelihood of the area being a community sensitive location or the objective of avoiding community sensitive locations and thus breached clauses 5.1.4(c) and (d) of the Industry Code.*

Under the Industry Code, Telstra must take into account the existence of community-sensitive locations, which explicitly include residential areas, childcare centres, schools, aged care centres, hospitals and regional icons.

The site for the Tower, 28 Morris Street is a residential property in a predominantly residential area. For example, 28 Morris Street itself is lived in by a family of six people. 24 and 26 Morris Street which are the adjoining terraces are also residential homes.

Relevantly, the 28 Morris Street site is also just 70 meters away from the Summer Hill Children's Centre (the **Centre**). The Centre is a not-for-profit long daycare centre set up to provide quality childcare and an education program for children aged between three and five years of age in the Summer Hill community. The Centre currently has 66 enrolled children and 9 staff members some of whom are there for up to 10 hours a day, 5 days a week. It has been operating for 33 years from the site of the heritage listed United Church at the corners of Lorne and Moonbie Streets in Summer Hill.

To provide you with a sense of the philosophy of the Centre, preference of enrolment is given to:

- Children at risk of serious abuse or neglect;
- A child of a single parent or both parents who satisfy the work/training/study test;
- Children of aboriginal or Torres Strait Islander families;
- Children in families which include a disabled person;
- Children in families whose C.C.B percentage is 100%;
- Children in families with a non-English speaking background;
- Children in socially isolated families;
- Children of single parents; and
- A child whose sibling attended the Centre previously.

The children largely play, eat and sleep outdoors. The 28 Morris Street site is also approximately the following distances from the other 'community sensitive' sites indicated below:

Summer Hill Public School	Moonbie Street	282 metres
KU Kindergarten	Henson Street	335 metres
SHARE Before and After School Care	135 Smith Street	330 metres
St Patrick's Primary School	9 Drynan Street	426 metres
Windermere Nursing Home	5 Henson Street	335 metres

It is of interest to note that the NSW Department of Education and Training policy on Mobile Telecommunications Facilities (1997) clearly states in clause 3.1:<sup>1</sup>

The Department of Education and Training adopts a policy of prudent avoidance in relation to the installation of mobile telecommunications facilities within school grounds or TAFE campuses.

The Department of Education and Training supports objections, if appropriate, to proposals to establish mobile telecommunications facilities near school grounds and TAFE campuses and requests that telecommunications carriers locate these proposed facilities further away from Departmental sites.

While the Department cannot state a specific separation distance between a proposed mobile telecommunications facility and a school or TAFE campus, the Department has a preference for a distance of at least 500 metres from the boundary of the property.

Yet as stated above, Tower at 28 Morris Street is within 500 metres of two primary schools, one kindergarten and one childcare centre.

In short, Telstra made no effort to either acknowledge the likelihood of the area being a community sensitive location or avoid community sensitive locations in the placement of this Tower and as such has breached the Industry Code.

#### Heritage significance

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<sup>1</sup> [https://www.det.nsw.edu.au/policies/administrative/asset\\_manage/mobile\\_ph/PD20050148.shtml](https://www.det.nsw.edu.au/policies/administrative/asset_manage/mobile_ph/PD20050148.shtml).

*We submitted that Telstra did not have regard to the heritage significance of the proposed Tower site and thus breached clause 5.1.4(g) of the Industry Code.*

Summer Hill is a suburb of considerable heritage charm, with a number of late 19<sup>th</sup> century and early 20<sup>th</sup> century homes and gardens. Many properties in the nearby streets to the site of the Tower are designated heritage properties (including the Summer Hill Children's Centre) and many others are in draft conservation areas or included in the new Draft Principal Local Environmental Plan for Ashfield.

The 28 Morris Street site is in the draft Tavistock Estate Conservation Area and itself a draft heritage item. Numbers 24-28 Morris Street are described as a suite of three joined two-storied shops with dwellings built in 1887.

In the 'statement of significance' regarding Morris Street by Ashfield Council it is noted that:

This suite forms an important element of the streetscape here, especially as it is complemented by eight properties similarly facing Morris Street opposite. It demonstrates the erstwhile commercial and retail values of this street, so close to Smith Street. Its history as a part of the Tavistock Estate has interesting associations with James Bartlett, the original entrepreneur, John Hudon and also with subsequent property owners and a great variety of small businesses that have been part of Ashfield's history.

In a memorandum from Helen Wilson, Ashfield Council's Heritage Adviser to Ashfield Council regarding the heritage issues associated with the proposed 28 Morris Street site, Ms Wilson concluded that:

- There are many heritage problems with the Tower proposal;
- The row of shops that 28 Morris Street form part of have been identified as heritage items and as part of the Tavistock Estate Conservation Area;
- This is a Gateway to the Conservation Area;
- The Tavistock Estate Conservation Area is of great significance;
- The proposed Tower will be much higher than stated; and
- The proposed Tower will severely impact on the streetscape as its location is highly intrusive, dominant and overbearing.

We note that the Ashfield & District Historical Society Inc strongly objected to the proposed installation at the site given the significant heritage concerns in their letter to Telstra dated 17 November 2009.

#### Community consultation

*We submitted that Telstra did not have regard to the outcomes of consultation processes with the Summer Hill community and Ashfield Council and thus breached clause 5.1.4(f) of the Industry Code.*

Under section 5.5 of the Industry Code, Telstra must engage in community consultation, in particular meeting the following requirements:

1. Before commencing the proposed work Telstra must develop a plan for local community consultation in accordance with the Consultation Guidelines in Appendix C (section 5.5.2);
2. Telstra must comply with its Consultation Plan (section 5.5.4);
3. In developing a consultation plan for a site Telstra must have regard to the objectives of section 5.5.5 (a):
  - identifying and informing interested and affected Parties of the proposed project;
  - providing adequate time for interested and Affected Parties to consider and engage in meaningful dialogue on the project;
  - maximising the level of accurate and accessible information about the project to interested and Affected Parties;
  - identifying and attempting to resolve potential issues early in the site planning process;
  - obtaining mutually acceptable outcomes on individual projects;
  - have regard to Ashfield Council's views on consultation;

- use its reasonable endeavours to identify community sensitive locations; and
- use its reasonable endeavours to identify relevant community stakeholders.

Under Section 5.5.6 the Plan must require the Carrier to (a) consult interested and Affected Parties, occupiers of community sensitive locations and relevant community stakeholders who were identified under clause 5.5.5 and (b) respond to specific information requests in a timely manner.

In our view, Telstra's community consultation was woeful. We understand from Telstra's letter to Council dated 6 October 2009, that the consultation plan submitted to Council merely involved:

- a. Letter to the owners of 28 Morris Street;
- b. Letter to Ashfield Council; and
- c. Letters to 'Immediate Residential Neighbours'.

From what Summer Hill residents have been able to ascertain, letters addressed 'To the Occupier' were sent to a small number of residents in the vicinity of the proposed Tower site. Some, just meters away (such as 24 Morris Street) claim not to have even received a letter. Importantly, Telstra did not originally deliver a letter to any of the facilities that are identified in Telstra's own letter as 'areas of interest' in Appendix A of its letter of 23 October 2009, namely:

- United Church Child Care Centre (actually named the Summer Hill Children's Centre);
- Summer Hill Community Centre;
- Summer Hill Public School;
- Windemere Nursing Home; and
- St Patrick's Primary School.

None of these facilities were even appropriately consulted by Telstra. The Industry Code specifically mentions Parents and Citizens groups as relevant community stakeholders,<sup>2</sup> yet Telstra made no attempt to contact the P&C group at Summer Hill Public School, St Patrick's Primary School or the Management Committee of the Summer Hill Children's Centre. It is difficult to see why the parents and guardians of close to 1,000 children at these facilities would not be considered stakeholders in the community consultation.

Despite requests being made on numerous occasions, on 13 November 2009, Telstra point blank refused to meet with the Summer Hill community responding that:<sup>3</sup>

Telstra considers that engaging in any further communication with the community prior to the community having the opportunity to review these detailed responses would be premature.

Due to overwhelming community pressure, Telstra ultimately was forced to attend two meetings at Ashfield Council on 2 December and 15 December 2009. However, we are concerned that consultation was given 'lip service' rather than genuine engagement. To illustrate this point:

- Telstra repeatedly refused residents' requests to attend a community meeting – Telstra attended two Council meetings with five residents in total in circumstances where those residents made it clear that they could not represent the broader populace of Summer Hill;
- Telstra made no attempt to meet face to face with the Director of the Summer Hill Children's Centre nor the Principal of Summer Hill Public School;
- Telstra did not respond to a number of people that sent submissions in opposition to the Tower;
- Telstra's responses to residents' submissions were template letters that in many cases did not even adequately respond to the issues raised; and
- Telstra's decision to proceed with the Tower was made prior to any response to our comprehensive submission.

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<sup>2</sup> Clause 5.5.5 (E).

<sup>3</sup> Email from J Mills, Urbis on behalf of Telstra to S Terravecchia of 13 November 2009.

**Finally, Telstra ignored the close to 250 submissions, 1000 signatures on an objection petition and strong objections of Ashfield Council, State and Federal politicians in proceeding with the construction of the Tower at 28 Morris Street, Summer Hill.**

In the circumstances, we submitted that Telstra had not engaged in sufficient or meaningful community consultation in accordance with the Industry Code.

Co-location

*We submitted that Telstra has not had regard to opportunities to co-locate the proposed facility and Ashfield Council and thus breached clause 5.1.4(m) of the Industry Code.*

Telstra's original letter of 23 October 2009 relevantly stated:

Telstra has thoroughly canvassed the Summer Hill area in search of an appropriate site for a new telecommunications facility.....

As you are no doubt aware, under the Ministerial *Telecommunications Code of Practice 1997* (the **Ministerial Code of Practice**) and its amendment of 2002, Telstra must take all reasonable steps to co-locate the Tower with the existing facilities of other carriers. Based on the ACMA website, there are at least three (3) other sites already in Summer Hill, namely commercial premises at 2 Smith Street, commercial premises at 35 Grosvenor Crescent opposite the train station and 182 Old Canterbury Road, along the main road that forms the boundary between Summer Hill and Dulwich Hill.<sup>4</sup> Telstra has responded saying that none of these sites are appropriate (see their response of 18 December 2009).

However, we now understand that the proposed 28 Morris Street site is to service Summer Hill and neighbouring suburbs, Dulwich Hill and Lewisham. Telstra has refused to provide information on what steps were taken by it to collocate or upgrade at the numerous existing sites in the above suburbs. Examples listed in databases held by ACMA and the RFNSA include the following:

- 831 New Canterbury Road, Dulwich Hill;
- 425 New Canterbury Road, Dulwich Hill;
- Railway Station, Dulwich Hill;
- 115 Constitution Road, Dulwich Hill; and
- 71-79 Audley Street Cnr Fisher Street, Petersham.

In the circumstances, we do not believe that Telstra has taken all appropriate steps to collocate the proposed Tower with existing facilities.

In short, we argued that Telstra did not apply the 'precautionary approach' to the Tower at 28 Morris Street, Summer Hill. Disappointingly, ACMA refused neither to consider Telstra's breaches of the Industry Code as set out above nor to take urgent action to stop Telstra from exercising its commercial power against the strong opposition of a community. As a result, Telstra constructed the Tower in early 2010.

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<sup>4</sup> Based on the ACMA Register of Radiocommunications Licences - [http://web.acma.gov.au/pls/radcom/register\\_search.main\\_page](http://web.acma.gov.au/pls/radcom/register_search.main_page).

**4. Telecommunications Amendment (Enhancing Community Consultation) Bill**

In light of our community's experience outlined above, we strongly support the Telecommunications Amendment (Enhancing Community Consultation) Bill (the *Bill*). We also note that this was **not an isolated experience**, indeed since going through this ordeal we have been contacted by many local communities who have had similar experiences.

There are clear and overwhelming reasons for telecommunication carriers that are constructing telecommunications towers to more fully and genuinely engage with the local community. This not only has implications locally, but also nationally, where there is a growing perception that carriers have little or no regard for engagement with communities.

In particular, we support the following amendments in the Bill:

- The requirement that owners and occupiers of land to be notified of a proposal to either build or modify a telecommunications tower within 500 metres of their property;
- The requirement to notify owners and occupiers providing them with 30 days in which to respond to the proposed development;
- That new telecommunications towers cannot simply be declared to be "low impact" and thus circumvent local planning regulations and processes;
- The proposed limits to the size and capacity of telecommunications towers;
- The restrictions that ACMA can only issue installation permits for high impact facilities only in extraordinary circumstances;
- The restriction to disallow ACMA from considering commercial interests when determining the importance of a facility in a telecommunications network;
- The requirement that ACMA, when considering developments near community sensitive sites, to be satisfied that all alternative sites are unfeasible; and
- Finally, enabling local communities to appeal a facility installation permit being granted with the Administrative Appeals Tribunal.

Should you require further information, please do not hesitate to contact us.

Yours sincerely

Signed below on behalf of the **Summer Hill Action Group**

**Susan Terravecchia**

**Leigh Ringrose**

**Manfred Fahr**

**Fiona Parker**

**Ellen Lloyd-Shepherd**

**Neil Lloyd-Shepherd**