

Ms Sharon Bird MP
Chair House of Representatives Standing Committee,
Infrastructure and Communications
Telecommunications Amendment (Enhancing Community Consultation) Bill 2011
E: ic.reps@aph.gov.au

6 November 2011

Dear Ms Bird,

Submission: Telecommunication Amendment (Enhancing Community Consultation) Bill 2011

Thank you for the opportunity to provide comments on the proposed amendments to this legislation.

Our group, Residents Opposed to Optus Tower in Clunes (ROOTiC), has been dealing with a proposal, by Optus, to erect a 40 metre telecommunications tower on the edge of our village since May of this year and the situation remains unresolved. Our comments emerge from this experience.

Enhancing Community Consultation

We welcome the intention of the amendment to strengthen the requirement for community consultation. In particular, we applaud the insertion of Clause 17 1) c) that residents or owners of land within 500 metres of the proposed installation must be informed by the telecommunications company (telco) of their intention to erect a structure.

We also welcome the amendment to Clause 17 4), that notice be given at least 30 business days prior to action, rather than the previous 10.

However, what these and the other amendments to the Act fail to do is enhance community consultation. What is enhanced is the requirement to provide information to the community. According to the Australian Concise Oxford Dictionary (2004), to consult means to “seek

information or advice ... seek permission or approval ... take into account; consider (feelings, interests etc.)". At present, there is nothing in this Act which requires a telco to take any notice of objections or concerns raised by residents, owners, or the community. The issue which we encountered is that regardless of the numerous submissions made by community members to Optus, regardless of the face to face meeting which Optus had with us, Optus can do what it likes.

Furthermore, there is apparently no provision in this Act or in any other related Act, which empowers the local Council to raise concerns, or express its opinion. Our local Council believes it has no power to do anything other than encourage the residents to express their views.

Community consultation should include Council views, and there should be a requirement that the telco takes notice of these concerns and responds to them, and does not proceed if the majority of the community do not want them to proceed.

Installation Permits and 'Complying Developments'

We welcome the additions to Clause 27 1) g).

However, we believe that Clause 27 1) g) i) needs to be strengthened.

Furthermore, there is no clarity regarding ACMA's role in issuing a permit according to the criteria in Clause 27 1), when it is not ACMA who is receiving community opinion or concerns. These are expressed to the telco in the consultation process. Perhaps an independent body should monitor the community feedback and require the telco to respond in particular ways to those concerns which it judges to have merit.

Clause 27 1) d) relates to this point. How can ACMA weigh up the relative benefits and potential damage to the environment without being directly involved in receiving feedback from the community regarding its concerns?

Our experience in Clunes is that the proposed 40 metre tower was seen to be a "complying development" pursuant to Clause 116A State Environmental Policy (Infrastructure) 2007 (NSW). However, in our situation, the land across the road from the proposed tower site was nominated to be re-zoned from Rural 1A to large residential, a proposal which Council had been discussing for a considerable period of time. Should the rezoning have already occurred, the proposed site for the 40 metre tower would not be a "complying development" as it would be well inside the required 150 metres from the boundary of the large residential zone. In fact, our measurements found it would be approximately 40 metres from the boundary. In this instance

the re-zoning was not for new land development but to correctly name the current usage as large lot residential. All the residences that would be allowable in that zone, are already in place.

Whilst we recognise that the 'complying development' relates to State, not Federal legislation, we wish to point out that there is an interaction between these Acts which could be addressed Federally. We believe that legislation should ensure that any re-zoning proposed by a local Council should be part of the consideration as to whether or not the proposal is a complying development or not.

Appeals

We welcome the inclusion of Clause 35 3A that the Administrative Appeals Tribunal (AAT) could hear an appeal regarding a decision made by ACMA. However, for this process to have any usefulness, the relevant legislation regarding consultation and community concerns needs to be changed. Otherwise, the AAT can only uphold any decision already made by ACMA.

Mim Weber and Wendy Livingstone

On behalf of

Residents Opposed to Optus Tower in Clunes

(we are a small group of residents, no chairperson. The submission has been agreed to by the majority of the group)