



TELECOMMUNICATIONS FACILITIES POLICY

(Leasing/Licensing of Council Land)

Policy Ref:

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Date of Next Review:

Responsible Officer: Roy Notini





1. INTRODUCTION

The Telecommunications Facilities Policy (Leasing/Licensing of Council Land) has been developed to provide a framework for a consistent and transparent approach to requests from telecommunications companies to install telecommunications facilities on Council-owned or managed land.

This policy has been developed following internal consultation with relevant Council departments.

The framework for the policy is based on Council as public land manager. Council as the responsible authority reviews planning applications for telecommunications facilities through a separate process under the Planning and Environment Act 1987.

The policy sets out the criteria against which Council will consider proposals for leases/licences for telecommunications facilities and to address the issues these proposals raise for the community and for Council to consider.

Telecommunications facilities are becoming more prevalent throughout municipalities to meet the growing needs of modern communication. Whilst the community recognises the need for such facilities, they are often not perceived favourably particularly in residential areas and public parks.

Council officers have an obligation to consider all requests for use on Council land or Council facilities. All requests will be considered on a consistent basis with due consideration given to:

- Community benefit;
- Financial impact;
- Appropriate land use; and
- Neighbourhood amenity.

2. OBJECTIVES


The objectives of the policy are to:

1. Ensure surrounding land use is not adversely affected by the installation of telecommunications facilities;
2. Provide applicants with Council's requirements relating to design, siting, construction and operation of telecommunications facilities;
3. Minimise the visual impact of infrastructure associated with the provision of telecommunications services; and
4. Ensure the siting of telecommunications facilities in appropriate locations within the municipality whilst facilitating the provision of telecommunications infrastructure and associated services in an efficient and cost effective manner to meet community needs.

3. POLICY STATEMENT

When making decisions regarding appropriate locations for telecommunications facilities, Council will:

- Comply with relevant legislation;
- Ensure telecommunications towers are installed throughout the municipality with consideration to the health, wellbeing and service connection of the community;
- Have regard to location preference;
- Ensure designs minimise visual impact;

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- Undertake appropriate community consultation; and
 - Benchmark current rentals for like telecommunications facilities from a commercial and local government perspective.

4. POLICY INITIATIVES/ACTIONS

4.1 POLICY SCOPE

This policy relates to all leasing/licensing proposals submitted by telecommunications companies (or consultants acting on their behalf) to install telecommunications facilities on Council-owned and managed land.

Council seeks to ensure that the installation and operation of telecommunication facilities in Wyndham does not detract from the local amenity nor lead to any detrimental environmental, health, social or economic effects on the local community.

The policy supports consolidation of telecommunications facilities by encouraging the co-location of facilities or the upgrade of existing facilities whilst recognising the public benefits of telecommunication infrastructure.

4.2 IMPORTANCE OF INFRASTRUCTURE

- The Commonwealth Government has established a legislative and policy framework to ensure consistency in the provision of telecommunications infrastructure.

Environmental Perspective

- The design and management of telecommunications facilities have environmental implications for the use of natural resources, visual amenity and landscape disturbance.

Economic Perspective

- Telecommunications facilities are important in sustaining residential, commercial and industrial urban development. Substantial costs are involved in upgrading and maintaining existing infrastructure. Such costs must have regard to environmentally sustainable objectives. Changes in technology, particularly telecommunications, will continue to have major impacts on competitiveness.


Social Perspective

- Telecommunications facilities are essential elements that enable social interaction, promote community safety and create comfortable living environments. Poorly managed infrastructure has implications on the community's health, safety and quality of life.

4.3 LEGISLATION

COMMONWEALTH GOVERNMENT

- It is the responsibility of the carrier to ensure and demonstrate to Council that all the requirements of the *Telecommunications Act 1997*, the *Telecommunications (Low-impact Facilities) Determination 1997* and the *Telecommunications Code of Practice 1997* are complied with.



STATE GOVERNMENT

- Council must ensure that any proposed telecommunications facilities comply with the *Code of Practice for Telecommunications Facilities in Victoria, July 2004* (an incorporated document in all Victorian Council Planning Schemes).

The purpose of the Code of Practice 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 the principles for design, siting, construction and operation of a telecommunications facility, which a responsible authority must consider when deciding on an application for a planning permit.

4.4 COUNCIL CONSIDERATION

Council's decision-making process concerning the installation and use of telecommunications facilities falls into three categories:

- **Responsible Authority:**

As the Responsible Authority, Council is charged with administering the Wyndham Planning Scheme ('WPS') where a planning permit is required under Clause 52.19 (Telecommunications Facility) of the WPS.

- **Public Land Manager:**


In the case of public land vested in the authority of the Council, the Council (as public land manager) has a duty to ensure the responsible management of the land and protection of its assets. Additionally, Council must provide a letter of consent to any application for a planning permit being made to install telecommunications facilities on public land that it manages and must be notified of any low-impact facility activity to be carried out on its land. For high impact facilities, telecommunications companies must enter into a lease/licence with the landowner.

Notes

Low-impact facilities are generally small radio communications antennae and dishes erected on existing towers or buildings that are designed to be unobtrusive. Other types of low-impact facilities include underground cables, public telephones, telecommunications pits in footpaths and co-located facilities. The maximum height of a low-impact facility is 6.5 metres, but only when sited in a rural or industrial zone.

There is also an increasing number of wireless internet service providers seeking opportunities to host telecommunications infrastructure on Council land. The infrastructure can vary in size from small towers to small gateway hardware (~ 30cm), or smaller equipment located on building rooftops.

Schedule 3 of the Telecommunications Act 1997 and the Telecommunications Code of Practice 1997 set out a process ("the **Land Access Process**") that allows the telecommunications service provider to install Low-Impact facilities without the consent of the Land owners/occupiers, and without obtaining State or local government approvals. The main responsibilities of service providers under



the Land Access Process are to notify Land owners/occupiers in advance and make reasonable efforts to consult with a Land owner/occupier about the activities if they object to the activities.

Whilst a telecommunications service provider is not required by law to enter into a financial agreement with a land owner to install and maintain a low-impact facility, the parties can enter into negotiations for access and tenure. More often than not, the telecommunications service provider offers a licence or lease agreement for the proposed facility.

High-Impact Facilities are generally towers that require a planning permit.

Towers – Man-made structures that are always taller than they are wide, usually by a significant margin, generally built to take advantage of their height and can stand alone or as part of a larger structure. In the context of telecommunications a tower requires a planning permit to be erected and is usually either a HUB or a BTU.

Mobile phone towers are generally 25 to 30 metres high.

A HUB is a larger tower in excess of 50 metres.

A BTU is a smaller tower in the range of 25 to 30 metres.

- **Local Government:**

As a democratically elected body, Council has an obligation to represent and meet the needs of the local community.

** It is important to note the policy does not seek to ensure that a telecommunications facility cannot be seen by many or most people, and that there is a need to balance net community benefit and the visual impacts of telecommunications facilities installations.

4.5 COUNCIL'S MISSION STATEMENTS

This policy supports Council's Towards Wyndham 2040 mission statement by addressing the following objectives:

"Council will work with the community to ensure Wyndham is an inclusive, safe and welcoming city, which celebrates our diverse heritage and cultures, and helps residents to stay healthy, active and connected."

"Council will lead Wyndham's evolution in becoming a "SMART City" by embracing new and emerging technology; working with expert partners; applying innovative ways of problem-solving; and adopting advances in technology to find more effective and efficient solutions".

This policy takes into account the following:

- Wyndham Open Space Strategy 2045 which identifies the need for both passive and active open space and the intended use of both categories of land. Installation of telecommunications infrastructure on these land types can have two effects – one to reduce the usable land size (albeit usually minimal space) and second to restrict the intended land use; and
- Wyndham City Council's Sports Facility Capital Development Guide 2015-2020.

Both documents outline how Council will provide facilities that allow more people to participate more often in leisure and their local communities.

4.6 ASSESSMENT CRITERIA FOR COUNCIL OWNED ASSETS, LAND AND BUILDINGS

Council (as owner of the subject site) will have regard to the following matters when considering applications for telecommunications facilities on public land:


- Telecommunications companies are expected to provide reasons and evidence for proposed telecommunications installations (e.g. evidence of complaints of poor reception/slow downloads experienced by members of the community);
- Evidence that the applicant has investigated and exhausted alternative locations and solutions;
- Steps that have been taken by the applicant to improve existing telecommunications facilities in the area together with any considerations for co-location;
- The need for the facility in the proposed location;
- The impact of the facility on the primary use of land and any conflicts with the use of land for a public purpose;
- The potential impact on the local community, to include evidence that community consultation has been undertaken within a 200 metre diameter of the proposed location of the telecommunication facility;
- Whether the proposed installation is inconsistent with Council's:
 - Open Space Strategy
 - Master Planning strategies; or
 - Gazetted or future Precinct Structure Plans
- Avoiding utilisation of Council's assets and services wherever possible and instructing telecommunications companies to obtain separate points of power supply;
- Minimising excavations on Council's reserves for power and cabling services wherever possible and utilising trenchless methods for cabling;
- Ensuring that the best commercial terms are obtained for the proposal;
- A binding and enforceable lease/licence for the proposal with appropriate terms and conditions;
- The requirement for formal Council approval for a lease/licence of Council land in accordance with section 190 of the Local Government Act 1989;
- The requirement to publicly advertise a lease proposal and invite submissions from the public in accordance with section 223 of the Local Government Act 1989; and
- Any submissions received in response to the public notification process must be considered by Council, and appropriate resolutions made prior to any lease being entered into. If no submissions are received, a lease may be finalised subject to Council approval and any related requirements.

4.7 FINANCIAL IMPLICATIONS

Council (as owner of the subject site) will ensure that the best commercial terms are obtained for lease/licensing proposals. Where appropriate, a current market rental valuation for the proposed leased/licenced site will be obtained from an independent valuer experienced in telecommunications facility installations. Common commercial practice is to have fixed annual rental increases apply during the term of the lease/licence.

In addition to financial considerations, Council will also explore opportunities for contributions by the Telecommunication companies towards infrastructure facilities to ensure that benefits are obtained for the community as appropriate. Such contributions may be in the form of, but not limited to:

- maintenance/upgrade of nearby Council facilities eg toilet facilities;
- installation of lighting (to Council specifications) on nearby lighting towers on sporting reserves;
- undertaking landscaping of land adjacent to the proposed leased areas.



All costs associated in respect to installation, maintenance requirements and leased/licensed site restoration are to be met solely by the owner of the telecommunications facility.

Any costs incurred by Council associated with the preparation of a lease/licence agreement shall also be met by the telecommunications provider.

4.8 COMMUNITY CONSULTATION

Telecommunication companies are expected to provide a master planning list of proposed installations in the municipality. Council intends to provide details of its master planning of “greenfield sites” prior to development of the sites.

Should Council resolve to lease Council land, Section 223 of the Local Government Act stipulates that a public notification process is to be undertaken by Council.

LEASING/LICENSING OF TELECOMMUNICATIONS FACILITIES APPLICATION CHECKLIST

Issue
1. Telecommunications company/consultant (Applicant) has provided sufficient information relating to the proposal including clear plans for Council's preliminary review.
2. Applicant has provided evidence that it has investigated alternative locations to the subject site and any considerations for co-location of telecommunications facilities with other telecommunications companies (if applicable) and why this is not an option.
3. Telecommunications company has provided rationale behind the subject land being the preferred site.
4. Survey of Council Managers has been undertaken to ascertain whether the proposed location is deemed suitable for a telecommunications facilities site.
5. Is Council satisfied with the rationale and justification provided by the Telecommunications Company for the proposed Telecommunications facility installation on Council land?
6. Applicant has been advised by Council (as land owner) to proceed with a formal Planning Application noting that the lease for the land is subject to Council resolution.
7. Has Council resolved to approve the Lease of Land for the Telecommunications Facilities as required under section 190 of the Local Government Act, subject to the public notification process for the Notice of Intention to Lease?
8. Has Council undertaken the public notification process for the Notice of Intention to Lease Land as required under section 223 of the Local Government Act?
9. Has Council received any objections from the public notification process for the Notice of Intention to Lease Land?
10. If Yes, has a date been scheduled for the hearing of submissions?
11. Following the hearing of submissions, has a report been tabled at a subsequent Ordinary Council Meeting for a decision on any submissions for the Notice of Intention to Lease Land to the telecommunications company?