Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Answers to questions on notice: Inquiry into the Telecommunications Amendment (Mobile Phone Towers) Bill 2011

QUESTION

Senator McKENZIE: On the local government issues that you raised in your submission, Mr Bullock, but also the general fit for purpose and the contextualisation of the consultation: do we want to give it all to the feds? How do you imagine and envisage the local community consultative process and application of the legislation happening on the ground, because it is local councils who I see as being in the best place to have the conversation with community and to have control over what happens in this space actually can occur? Would you flesh that out a bit more for me? (*Proof Committee Hansard*, 12 April 2012, p. 10).

RESPONSE

We see that a dual system is needed. All tower developments should be run through a normal council development application process, with certain additional requirements for the envisaged carrier conducted consultation. Carrier conduct should be regulated at a federal level (see process map attached).

This would ensure that the conversation can be had at the local level, but that carrier behaviour can be regulated by the licencing authority (ACMA) that has power to sanction breaches. At present carriers are either not accountable to Council for low impact facilities or not accountable to ACMA for high impact facilities. Councils are clearly unable to address carrier conduct, they can only address planning issues as per their individual planning schemes. This leaves carriers unaccountable. The regulator should be responsible for carrier conduct for all tower developments.

Council assessment, without a federal layer of accountability, is complicated when Councils are both the planning authority and the landowner for a tower development. That is, they are conflicted in so much as they would receive rent, and the development application process becomes compromised. It is clear an independent appeals process needs to apply in such circumstances to address any potential issues with council decisions, as well as a federal regulator to address carrier conduct.

The basis of consultation would require every landowner and occupier within a 500 m radius being notified of the planned facility, no later than the lodgement of the DA, and given information about the planned site including EMR exposure levels (cumulative where relevant), alternative sites considered, sensitive sites in the area and the exposure levels at those sensitive sites, reasons for the installation and co-location options. Consultation would also see responses published on the RFNSA website along with the EME reports and other relevant information.

See answer to Senator Fisher's QON below for more detail.

QUESTION

Senator FISHER: If I can put it this way, and perhaps the witnesses might like to answer this on notice: how do you legislate with whom consultation should be had, how it must be done—by letterbox drop, email or phone—and when it must be done? What are the time frames? I am looking for the who, the how and the when in a one-size-fits-all measure, which is what legislation inevitably is (*Proof Committee Hansard*, 12 April 2012, p. 10).

RESPONSE

A very simple model is envisaged.

Consultation – when, how and with whom

Environmental EME reports prepared by industry for every site, report output to a 500m radius from the site, at which point the EMR exposure estimate is (in most cases) significantly reduced. Epidemiological studies[1] similarly show 500m as the radius of most health risk.

All landowners or occupiers within a 500m radius should be notified by letterbox drop as early in the planning process as practicable (no later than lodgement of a development application) and given 30 days to respond (see attached process map and note exemptions for emergency works etc).

The distinction between high and low impact towers will disappear under the proposed bill before the Committee.

The process proposed would address the issues raised with the Committee: systemic poor carrier conduct, poor consultation, lack of Council power, lack of carrier accountability, poor regulation, lack of real transparency of process, and a lack of appeal options.

A system is envisaged where dual jurisdictions would apply: that is, local government and Federal Government, both having responsibility and powers for all towers builds.

[1] *Mortality by neoplasia and cellular telephone base stations in the Belo Horizonte municipality Minas Gerais state, Brazil* : Adilza Dode et al, Science of the Total Environment, 2011, STOTEN-12672 , doi:10.1016/j.scitotenv.2011.05.051

The following practical process is the sort of thing communities are looking for.

Consultation process

1. Council to provide a consultation plan to the Carrier, identifying sensitive sites and key stakeholders. Carriers may choose to add stakeholders not listed.

2. Carrier will consult with all identified stakeholders (consultation plan) and landowners and occupiers within a 500m radius from the proposed tower, no later than lodgement of the DA, at which point the EME report must be publicly available on the industry tower archive RFNSA website: www.rfnsa.com.au (the Carrier, not council, must be responsible for consultation as the appeals and controls below will hold the Carrier, not the council, accountable)

3. DA is lodged. Carrier to include site selection report, addressing minimum requirements (set out in Ministerial Code).

4. Consultation timeframe: 30 days - excluding public holidays and school holidays

5. Carrier to provide all reasonable information requested by community/Council

6. Responses are published on the RFNSA website, unless the respondent requests otherwise

7. Consultation completion: Carrier to provide to Council with a consultation report and all community responses and correspondence

Appeals and controls

ACMA

Carrier site selection, consultation and conduct should all be accountable to ACMA. Legislative changes should ensure new requirements are enforceable – that carriers are truly accountable and carrier breaches are able to be sanctioned adequately with infringement penalties.

A recent review has ensured ACMA can apply these deterrents to service delivery breaches under the Telecommunications Act. Mobile telecommunications infrastructure should similarly offer much stronger deterrents (ie substantial fines), in place of the existing “formal directions” must be available for all infrastructure related breaches.

Stop works: show cause notices should be provided by ACMA to carriers when an complaint is received alleging a breach.

Power to issue a “stop work” (with a 30 day time limit) while a complaint is investigated is important to ensure a tower isn’t built before a genuine

complaint is assessed, introducing procedural fairness and natural justice for both industry and the complainant alike. The time limit will ensure the complaint is resolved quickly and work can resume if the complaint is not upheld.

TIO

The TIO's regulations should be expanded to allow them to deal with complaints from all affected parties, other than the land owner and occupier for a proposed tower site.

Amendments are also needed to the Telecommunications Code of Practice to extend the timeframes for objecting to a carrier or the TIO. Currently the timeframe is so short (5 days – see extract below) it isn't practical.

> **Telecommunications Code of Practice - Division 5 Clause 4.37 (1)**
>
> Within 5 business days after the objector receives the carrier's response to the objection, the objector may ask the carrier, in writing, to refer the objection to the Telecommunications Industry Ombudsman.

A non-response within the allotted timeframe offers carriers the ability to build regardless. This is not satisfactory.

Both the Board and the Council should be fully independent to address community concerns about conflict of interest due to the current composition.

Administrative Appeals Tribunal (AAT)

Administrative decisions by the ACMA or TIO (ie administrative bodies) should no longer be exempt from review by the AAT.

The availability of 5 out-year telecommunications infrastructure plans to Local Government will further enhance community understanding of carrier proposals.

QUESTION

Senator McKENZIE: You will be getting some questions on notice from me. Thank you so much for your very detailed responses. I did want you to flesh out the personal toll that I think community activism takes on you, your family and all the people who have been working with you on these projects over time. Maybe I will follow that up at a later date *Proof Committee Hansard*, 12 April 2012, p. 10).

RESPONSE

In making these remarks, please note that I am often contacted by communities in search of support, and have also spoken to No Towers Near

Schools who are contact by 2-4 communities/people a week seeking assistance.

Social and financial impact

The human toll is huge. It is hard to quantify the enormous impact a long battle (most last at least a year, some over 2 years) takes on people. It is common to hear of community groups working past midnight, night after night. I have been told time and again that it is like working a second job.

The personal hours and financial cost of battling a proposal without any power or support from Council, ACMA or the TIO - or any appeals body (particularly a low cost one!), against a carrier who is determined to go ahead at all costs, are enormous. Financial costs alone run at the minimum to thousands of dollars. Costs include funding letter drops, legal advice, planning advice, community meeting costs, hall hire, court costs, etc.

I am aware of three communities that have spent $15,000-$30,000 of their own money. One of these community battles is ongoing. Another community battle has ground to a halt, following years of unsuccessfully arguing for a site that suits the carrier and the community. The community have withdrawn from the second court case, heeding a warning that a third appeal from the carrier could land them in the Supreme Court, where a loss could spell bankruptcy. In desperation, people have taken annual and long service leave to cover tower commitments.

A community who battled for over a year, left a community member absorbing three and half weeks of her long service leave. She is too worried to take more long service leave as her community are faced with a second tower proposal from a different carrier, in case she might need it! Older community members, those with pre-existing health issues, migrants or those facing financial hardship are all put under additional pressure. All this is far from acceptable.

The inevitable cost of all those extra work hours, including the stress and difficulty of juggling work and tower related meetings, puts great strain on families, marriages, work and of course physical and mental health. People come close to losing jobs, are forced to opt out of all family responsibilities for extended periods as the hours stack up, marriages creak along and medical bills rise for increased illness.

I am aware of four cases personally where people have come close to complete breakdowns as a result. It is not surprising. Battling - day in day out - with both hands tied behind your back, with regulations that leave people powerless, fighting on, on the chance that pure public pressure will lead to carriers to reconsider and sincerely engage on an alternative workable site, is exhausting.

In a process where requests to carriers for information are routinely ignored and communities are consequently left to constantly hound carriers for responses (mostly without success), time drags on. Having to engage with

this conduct is extremely unpleasant and sits uncomfortably with people. Communities are left numb as they deal face to face with openly dishonest and unethical behaviour, and with no-one to call carriers to account. Trust is shattered. These are experiences that shake people's belief systems to their core.

Some communities give up their battle: the sustained and long term pressure is too much. Long battles with no hope of re-location of the tower have meant people uproot their family lives, moving house and sometimes their businesses rather than live near the tower they have so desperately fought to have reconsidered. Communities' experience reveals carrier tactics that appear to deliberately drag out the process, wearing people down bit by bit - month by month - sometimes year by year.

These issues also affect businesses and rural residents. Business owners confronted with tower proposals on their rooftops, are equally frustrated by the short TIO timeframes and lack of real power to argue their case. I hear of carriers playing off lower floor tenants against upper floor tenants, and am aware of businesses that have eventually moved when they can battle no longer or lose. Rural residents who have argued for better siting are held up by carriers as selfish and denying their broader community better services. This is not the case – I have yet to hear of anyone arguing for no tower, only better siting. This cruel tactic divides formally tight knit communities.

A senior Telstra employee told a community member that communities always fall into three categories - that working on this premise leads to them getting their original site almost every time, without fail:

1) Communities simply accept the site without debate;

2) Communities fight the site proposal but finally change their mind and decide to accept; or

3) Communities fight, but with time, run out of puff and just give up.

A trail of human debris is left in the wake of grossly unbalanced tower battles. It is a hidden toll that carriers seem arrogantly immune to as they continue to push past communities at all costs with a grim determination.

QUESTION

CHAIR**:** You will have to take that on notice and give us your response in writing, because we have run out of time. I have no time to ask any questions—bad chairmanship here this morning. Could I just indicate that I have some concern about your indication, I think it was Ms Hetherington, that we have our head in the sand, we are in a back water and we are behind the time—it was Ms Castellano. Could you also take on notice and provide a view as to ARPANSA's engagement with the WHO and what you see as the deficiencies there, because as I understand it we are not behind the times, we are actually engaging with the World Health Organisation, who are taking these matters very seriously (*Proof Committee Hansard*, 12 April 2012, p. 11).

RESPONSE

I believe that the testimony given by ARPANSA essentially answered this question, supporting Ms Castellano's view. ARPANSA are not up to date with the reasons for lower exposure standards in a third of European countries and acknowledged that the exposure standard had not changed since 2002, at which time it was based on 1998 data, and has not been updated since the WHO upgraded the risk rating for all EMR to 2B – possibly carcinogenic to humans, in May 2011.

There are other issues with the nature of the WHO's work, particularly the involvement of ICNIRP as highlighted by the recent 2011 Council of Europe report (provided by Ms Castellano to the Committee) and the work of Dr Cherry.

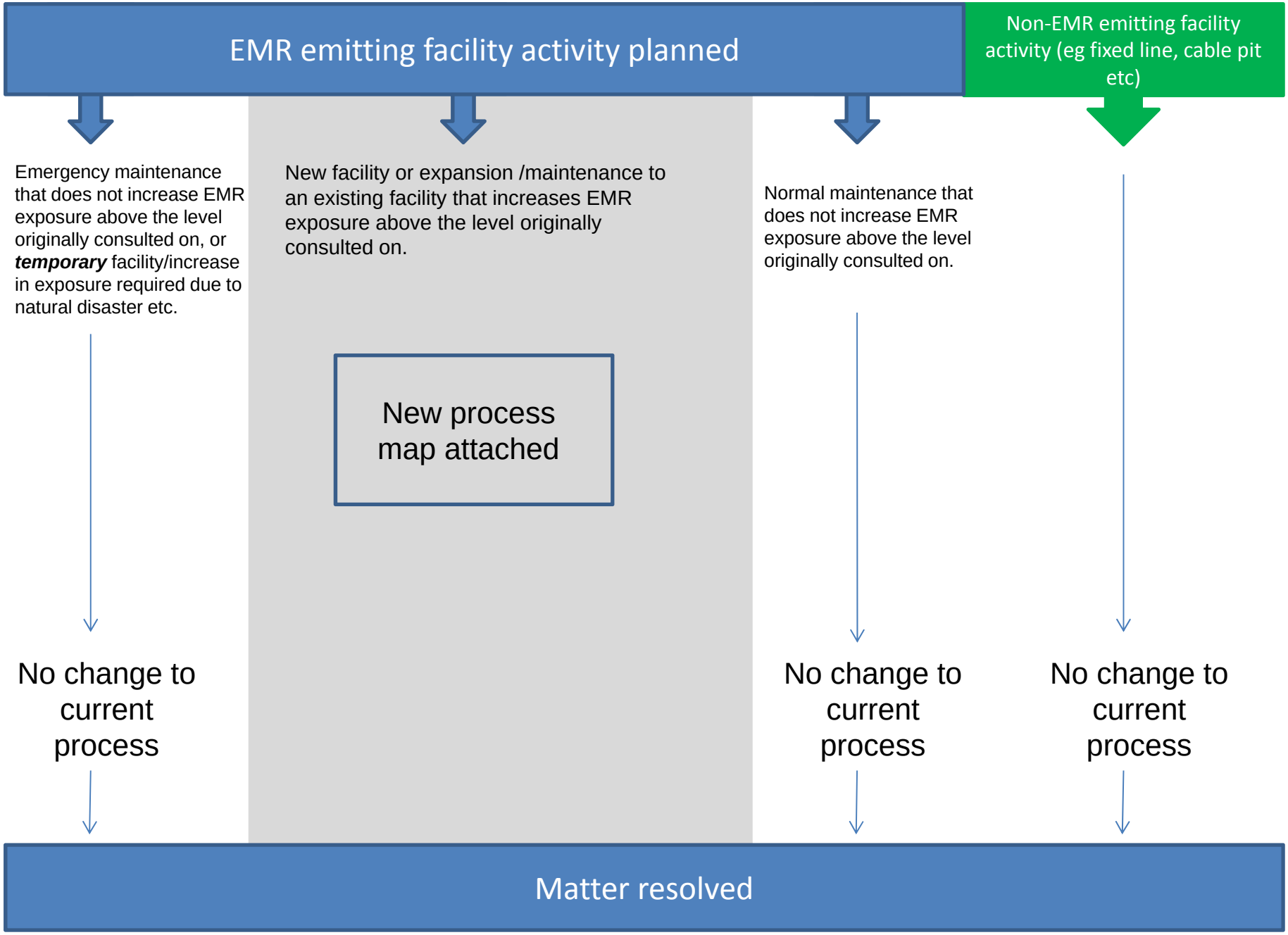
The testimony provided by ARPANSA is sufficient to point to ARPANSA's view that nothing will change until the physics changes (presumably that no amount of epidemiological study or biophysical research would alter their view).

In my own conversation with ARPANSA, they have confirmed that it is unlikely the EMR standard will ever change without absolute proof of a causal link. This is a tough ask for any environmental health hazard and a high risk strategy that does not inspire confidence in our current standard or ARPANSA's commitment to reviewing it adequately.

Community members who sit on the EMERG panel with ARPANSA are endlessly frustrated by the lack of interest in even considering the possibility of a potential health impact.

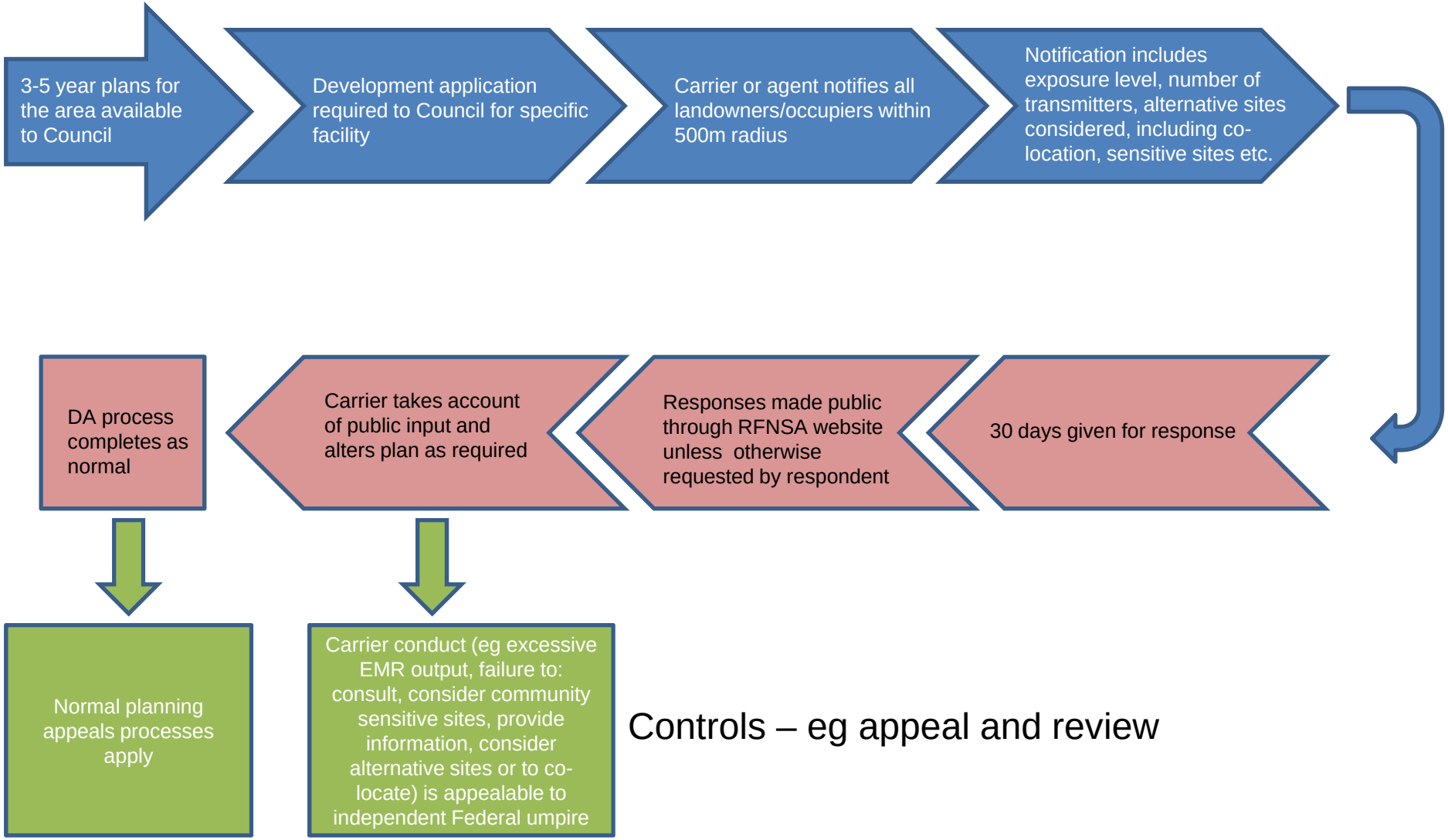
This steadfast reluctance to openly and publicly review our EMR standard for a technology that moves at a great pace, and in spite of a significant number of other countries choosing to set much lower EMR exposure standards, underpins why, in the view of many communities faced with inappropriate tower builds, we are behind the times and have our head in the sand.

Anthea Hopkins


EMR emitting facility activity planned
Non-EMR emitting facility activity (eg fixed line, cable pit etc)
Emergency maintenance that does not increase EMR exposure above the level originally consulted on, or ***temporary*** facility/increase in exposure required due to natural disaster etc.
New facility or expansion /maintenance to an existing facility that increases EMR exposure above the level originally consulted on.
Normal maintenance that does not increase EMR exposure above the level originally consulted on.
New process map attached
No change to current process
No change to current process
No change to current process
Matter resolved

New process map

New facility or expansion /maintenance to an existing facility that increases EMR exposure above the level originally consulted on.



Controls – eg appeal and review