

10th November 2011
Committee Secretary
House of Representatives Standing Committee
Infrastructure and Communication
PO box 6021
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Submission to the House Standing Committee

Telecommunications Amendment (Enhancing Community Consultation) Bill 2011

Lennox Head – our story

We battled Optus for over a year about their tower site. Eight other sites in the Ballina Shire were approved, showing we are getting much larger numbers of towers - but none as close to houses as this one.

Residents struggled to be heard in any quarter.

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Background

2nd October, 2010: an Optus project officer knocked on the doors of 4 people in Lennox Head, NSW.

He stated he was advising residents that Optus were to install a low impact base station behind their houses. It would consist of 6 antennas plus a metal equipment shed, permanently air conditioned, which would operate 24 hours a day. There are 3 small radio antennas on the site (Council) to monitor the water in the town water tank. Two

people asked for more information and were given a construction plan, but it did not show the permanently air conditioned equipment shed. One resident requested a projected photo of the installation. Residents were told they could write to Daly International if they had concerns. Residents later learned Daly International is a planning company that Optus employed for the site.

Optus maintain more than 4 people were consulted. Residents decided to doorknock all streets. Optus were wrong. Twenty nine statutory declarations went to the ACMA stating residents had not been notified, only the four. The ACMA discussed this evidence with Optus and Optus said they would do better next time. The ACMA failed the residents.

Even when residents have good evidence the ACMA did not support the residents or take action for the breach - the ACIF Code was ignored.

The proposed antennas were to go on an existing council water tank. The reservoir is in the oldest subdivision in Lennox Head and is completely surrounded by established family homes and adjacent to a children's park.

Antennas or towers can and are installed in sites that do not avoid community sensitive sites (ACIF Code) and on people's land/buildings when they've said no in some cases, under the legislation. The tank is nestled between family homes and very very close to homes, just 4 metres away.

Optus proposed residents return any comments to Daly International by 12th October (9 business days). As this was the school holidays, one resident asked for an extension of time. A one week extension was given by Optus.

Objections

135 submissions were sent to Optus objecting to the siting of 7 antennas on the water reservoir on the grounds of health concerns and amenity, as the site is adjacent to houses and a children's park. A petition signed by 300 residents was also submitted to Optus. Not one petition was submitted in favour of the proposal. Optus pushed on and without giving us any evidence or reports or answers to our questions, still said that they had to build on the tank. Our concerns did not seem to matter.

Many weeks passed before residents received even a reply from Optus.

The ACIF code stated that any resident who requested a copy of the report we had asked for, would have the report provided. Not one resident who requested the report received one. I had to ask three times over a long period but still did not get a copy. Eleven months later a local reporter was kind enough to give me a copy of the report, which Optus had given to him as background to a story he was doing about our struggle. One week later Optus gave us the report, when pressured to do so by the ACMA, who we had also asked

to follow up for the missing report. Consistently, requests for the provision of information by Optus to residents group were ignored. Optus needed to be badgered to provide even basic information and communication. The constant badgering we had to keep up, and ignoring of the residents requests caused enormous frustration and dragged the battle on for a year. We are exhausted. Despite the residents repeatedly raising concerns about building antennas so close to our homes, Optus continued to ignore us.

Despite the ACIF code saying a precautionary approach must be taken near sensitive sites such as residences, nothing will stop Optus, not even a twelve month public media outcry by residents. There is an overall lack of community power under current legislation, not one authority can make Optus uphold the legislation or code.

Mobile telecommunication deployment is covered by the Telecommunications Act, and the Low Impact Determination and the ACIF Code. These three documents were studied by the residents so we could try and understand why this was happening and why no-one could help us.

Council documentation shows that Council and Optus first contacted them about leasing the site in 2009. The residents were only informed in late 2010 and then were given only 9 days to reply.

Such a short time to reply is blatantly unfair. It takes time for residents surrounding the proposed site, who in many cases do not know each other, to even call a meeting to discuss the way forward.

Low impact

Optus called the proposed facility low impact. We vehemently disagreed and couldn't see why it was low impact and get to avoid Council planning. Apparently because it is on a public facility (a water tank) this makes it low impact. Council said they could not challenge the Optus determination of low impact.

As soon as the words "low impact" are mentioned no-one can do anything - not council, the ACMA, the TIO, state ministers, or even federal ministers could challenge the interpretation made by Optus.

Checks and balances need to be in place to ensure residents get some assistance and are not left stranded.

Land access and land owners

On 10th March 2011, Council received a land access notice as land owners, to state Optus intended to start work. Council could have objected but say they did not know they could. Council staff said "I did not know I had to do anything" (minutes of meeting with

Council and Optus). It is unlikely they could have anyway with only 5 days to respond. The documentation for the towers has now been changed. Finally, the drawings show exactly what is going to be built. Not that we knew this was happening as we only had the outdated documentation from Optus. It is not the same plan as that given or shown to residents at any time.

There had obviously been a change of design from the original plan to what has now been built. Residents were aghast when they saw the three huge diamond sized struts that would hold the antennas up, reaching over properties when we finally saw the new plans - one reaching over an old man's bedroom.

At a full council meeting in May 2011, Councillors put forward a motion to write to the Telecommunications Ombudsman (TIO) and offer to fly him to Lennox Head to examine the site and see the close proximity to houses. They were convinced once he saw the site, he would rule against the proposal. In correspondence, the Optus project manager asks of Council staff "Are you recommending councillors vote to object to the TIO as per this article, there appear to be a disconnect between our recent conversations and previous advice regarding the council staff position?" Council would not support the towers. Late July, Council had another 5 days. The plan they are given is the initial plan of 6 antennas (the out of date plan), not the new plan with 3 antennas and the large struts. Optus also sent Council the original out of date EME readings, not the increased EME readings that were shown on the telecommunications national site database. Regrettably, there is no evidence that council even noted the inaccuracies.

Consultation was very poor and happened behind closed doors. Residents were locked out of discussions. It is imperative that residents get properly consulted and given the right documentation. We should not have to check it all with a fine tooth comb for errors.

On 21st July, Optus state in a letter to council that immediate residential neighbours in neighbouring streets would receive a notification letter, as directed in the ACIF code. A notification letter to residents never occurred.

Without checks and balances by some authority with teeth, Optus and other telcos flagrantly breach the code and continue to expand their business without concern for the impact on residents. The legislation is tipped in their favour enormously.

No-one to help us

The TIO could not support Ballina Council to oppose Optus because the Council's objection was outside the (very short) timeframe given in the regulations.

The residents could not object to the TIO either because they only have power to deal with land owner access objections and nothing else, and only complaints from the land owners themselves.

Only the land owner could utilise the powers of the TIO.

Council staff then wrote to the ACMA, in agreement with residents. When residents asked for an update, Council discovered that the ACMA said they had not received the email they had sent them on 9th June, so Council staff again emailed the ACMA, over one month later, on 11th July. On the 14th July, the response from the ACMA states “If you believe a carrier has not complied with the Code, the first step is to express your concerns to the carrier in writing...The carrier is obligated to respond to you in writing. If you are not satisfied with the carrier’s response, you can send your original complaint and the carrier’s written response to the ACMA.” A second email, sent by the same ACMA staff member, advises Council that “council firstly needs to make its complaint in writing directly to Optus”.

On 12th July, Council instructed Optus not to commence work until ACMA have responded to the Ballina council submission. ACMA had already responded, saying Council had to lodge a letter of complaint to Optus. Another letter sent at exactly the same time from the ACMA, stated they could not give a ruling on low impact. So long as it was low impact, Council knew they could not stop it because so long as it was low impact Optus could install on their land even if they said no.

I had sent a complaint detailing perceived breaches of the ACIF code to the ACMA, on behalf of the residents group, but months of supplying information to ACMA afterwards ensued and took hours of correspondence, especially the final documentation, including the twenty nine scanned statutory declarations they requested as evidence. All the residents were holding out for the ACMA ruling. ACMA told Optus to do better next time. No fine or legal action for the breaches. We were conversely told we were not specific enough to how the code was breached but were not told until after the decision was made. We had sent solid proof we thought of the breaches. The residents were devastated. The ACMA is a toothless tiger.

Council claim they have never entered into a lease agreement for the site. This would mean the towers were installed against on council land when they have said no.

Against the continued outcry from the community, the council Manager, in a three day period as acting manager handed over the key to access the site, so Optus could commence building their three antennas that lean over homes. Residents called for documentation showing they had given Optus permission to enter their land and build. Council said none was needed, that they were powerless. Optus was not available for comment.

I even went to State Parliament in Sydney and met with Parliamentarians to lobby for support for our residents. They too were unable to help.

In summary

Throughout our community battle with Optus, there was nowhere we could go for help. Everyone seemed powerless, including us.

The ACMA took so long to respond that by the time the response came the towers were built and operating. The ACMA made us jump through hoops and still did nothing despite what we consider were clear breaches of the ACIF code around consultation and the parts that state they need to avoid community sensitive sites like residences and schools and hospitals.

Nine days for responding to a notification for a tower (keeping in mind too that only 4 people notified) was completely inadequate. Not even letters have been replied to. We felt like we were walked right over the top of.

There has been a massive cost to our community and we are worn out. We have borne the cost of printing letterdrops, posters, stickers and printing materials, not to mention the countless long hours for a whole year and the lost hours with families whilst we battled on. As the spokesperson for our group, I feel like I have been working a second job the whole time.

Optus made no effort to be transparent or work with residents for a better site. The tank is not appropriate and we know it will get worse when it is expanded with new panels or other carriers who decide to add to the water reservoir in the future.

In the residents' only face to face meeting with Optus, the Optus project manager laughed at us when we drew attention to the fact that they had doubled their output for the proposed facility on their national archive site, yet we residents had not been informed. While laughing, the project manager confessed "of course we will expand the site". It is wrong that the legislation means additions to existing towers do not require either residents to be consulted or council to approve them. Residents and council would be powerless to oppose them.

In our experience the ACMA, TIO, NSW Ombudsman, state parliament and federal parliament did not/could not do anything to help our community or address the breaches.

We would like to see the bill become law. We would like to see all residents that are affected properly consulted. We should have a say that means something. Towers affect us.

Our community is now lumbered with three low impact tower when there is already a tower less than one kilometre away that is a very high emitter (13.8%) and it has also just been expanded. The community was not told about the expansion.

Our family now intend to sell our beautiful home with a two hundred and seventy degree view of the ocean. We are selling to get away from the towers and to try to

put our lives back together. We have a nine year old child and for twelve months my husband has had to assume all responsibility for him and make the house function as I have been coordinating the action group. Both of us also have responsible occupations, in management and professionally. Our fight has turned our lives upside down and caused great heartache.

The only positive in the Optus fight is that we look forward to things changing for the better through very necessary changes to the legislation.

Yours sincerely,
Sue Hetherington
for WHAAT! (Worried Householders Action Against Tower)

