

5.0 COMMONWEALTH LEGISLATION

Optus holds a Carrier License within the meaning of the Telecommunications Act 1997 ("the Act") and accordingly, must comply with the provisions of the Act when installing and operating telecommunications facilities. The Act and subordinate legislation, together with other relevant Commonwealth legislation, are detailed below as applicable to the proposal.

5.1 Telecommunications Act 1997

The Act came into operation in July 1997 and provides the framework for regulating the actions of licensed carriers.

Schedule 3 of the Act, Carriers' powers and immunities, specifies 'authorised activities' that a carrier is empowered to carry out without approval under NSW legislation. These activities include the inspection of land, and the installation and maintenance of certain facilities.

Part 1 of Schedule 3 of the Act authorises a carrier to enter on land and exercise any of the following powers:

- Inspect the land
- Install a facility
- Maintain a facility

A Carrier's power to install a facility is contingent upon:

- a) the Carrier being authorised to do so by a Facility Installation Permit, or
- b) the facility being a low-impact facility (as defined by the *Telecommunications (Low- Impact Facilities) Determination 1997* (as amended)), or
- c) the facility being temporary and used for a defence organisation for defence purpose
- d) if other conditions are satisfied in relation to the facility concerned.

Optus does not hold a Facility Installation Permit, the proposal cannot be classified as a low-impact facility (refer to Section 5.2 below) and the facility is not a temporary facility for use by a defence organisation or for defence purposes.

As the proposed facility does not meet any of the criteria mentioned above, Optus is not empowered to install and operate the facility without development consent from the DPE in accordance with the *Environmental Planning and Assessment Act 1979* and the *State Environment Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007*.

5.2 Telecommunications (Low-impact Facilities) Determination 1997

The *Telecommunications (Low-impact Facilities) Determination* ("the Determination") came into effect on 1 July 1997 and the Amendment to the Determination (No.1 of 1999) came into effect on 17 August 1999.

The Determination contains a list of telecommunications facilities that are considered to be 'low-impact' and do not require planning approval under State or Territory laws. These are facilities that are essential to maintaining telecommunications networks and are unlikely to cause significant community disruption during their installation or operation. Proposed installations, such as this proposal, that are not low-impact under the Determination require approval under State planning laws.

5.3 Environment Protection and Biodiversity Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* ("the EPBA Act") commenced on 16 July 2000. It introduces a new role for the Commonwealth Government in the assessment and approval of development proposals where those proposals involve actions that have a significant impact on matters of National Environmental Significance, the environment of Commonwealth owned land and actions carried out by the Commonwealth Government.

Thredbo Village and Ski Resort is a well-established urban area in the Kosciuszko National Park. The subject site is located at an existing developed site, consisting of the Cat Shed maintenance workshop, with surrounding disturbed areas of land and the existing ski lift structure adjacent.

The proposed fibre transmission and power runs involving trenching to the Cat Shed maintenance workshop and to the existing Telstra fibre transmission will be bored across disturbed areas of land within cleared vegetation corridors that are used for ski runs during snow season.

As the subject site is an existing developed site, and proposed trenching will occur in cleared, disturbed areas of land adjacent to the Cat Shed maintenance workshop, there will be no significant impact on the flora and fauna of the area.

As such, the proposal is not of National Environmental Significance as defined under the EPBC Act, as it will not impact on:

- World Heritage Areas;
- Wetlands protected by International Treaty (The RAMSAR Convention);
- Nationally listed threatened species and communities;
- Nationally listed migratory species;
- All nuclear actions; and
- The environment of Commonwealth Marine area.

It is therefore considered that the proposal does not warrant referral to the Commonwealth Government.

5.4 Telecommunications Code of Practice 1997

Under the Act the Commonwealth Government established the *Telecommunications Code of Practice 1997* ("the Commonwealth Code"), which sets out the conditions under which a carrier must operate.

Section 2.11 of the Commonwealth Code sets out the design, planning and installation requirements for the carriers to ensure the installation is in accordance with industry "best practise". This is required to:

"...minimise the potential degradation of the environment and the visual amenity associated with the facilities" (Item 3, Section 2.11).

Best practise also involves the carrier complying with any relevant industry code or standard that is registered by the Australian Communications and Media Authority (ACMA) under Part 6 of the Act.

It is proposed to locate the telecommunications facility within an area that already has infrastructure in the form of the large Cat Shed maintenance workshop and existing ski lift structure. The subject site has also been chosen for its tree screening opportunities. The facility has been designed using non-reflective material and an appropriate colour matched scheme so as to limit its visual impact.

5.5 Industry Code C564:2011 – Mobile Phone Base Station Deployment

In response to calls for greater council and community involvement when telecommunications facilities are installed, the Communications Alliance Ltd developed the *'Industry Code C564:2011 - Mobile Phone Base Station Deployment'* ("the Deployment Code").

The Deployment Code cannot change the existing regulatory regime for telecommunications at local, State or Federal level. However, it supplements the existing obligations on carriers, particularly in relation to community consultation and the consideration of exposure to radio signals, sometimes known as electromagnetic energy (EME or EMR).

The Deployment Code imposes mandatory levels of notification and community consultation for sites complying with the Determination. It identifies varying levels of notification and/or consultation depending on the type and location of the infrastructure proposed.

As the proposed telecommunications facility is not considered to be a 'low-

impact' facility under the Determination, it is not subject to the notification or consultation requirements associated with the Deployment Code. These processes are handled within the relevant State and Local consent public notification procedures.

Nevertheless, the intent of the Deployment Code to ensure the carriers follow a 'precautionary approach' to the siting of infrastructure away from sensitive land uses, has been followed in the selection of the subject site as demonstrated in the Deployment Code Section 4 Precautionary Approach Checklists (PAC) and Traffic Light Model TLM which is attached at Appendix D.

Included in the Section 4.1 PAC is a statement on how the public's exposure to EME from the site has been minimised. All emissions from the site will be well within the limits of the relevant Australian Standard. Details of this standard are contained in the following section.

Also attached at Appendix D is the Deployment Code Section 4.2 PAC which demonstrates how the proposal has been designed in accordance with the Code's 'precautionary approach'.

The subject site has been selected and designed to comply with the requirements of the Deployment Code and the precautionary approach, which has been adhered to.

Further information can be obtained at www.rfnsa.com.au/2625005 Screenshot below:

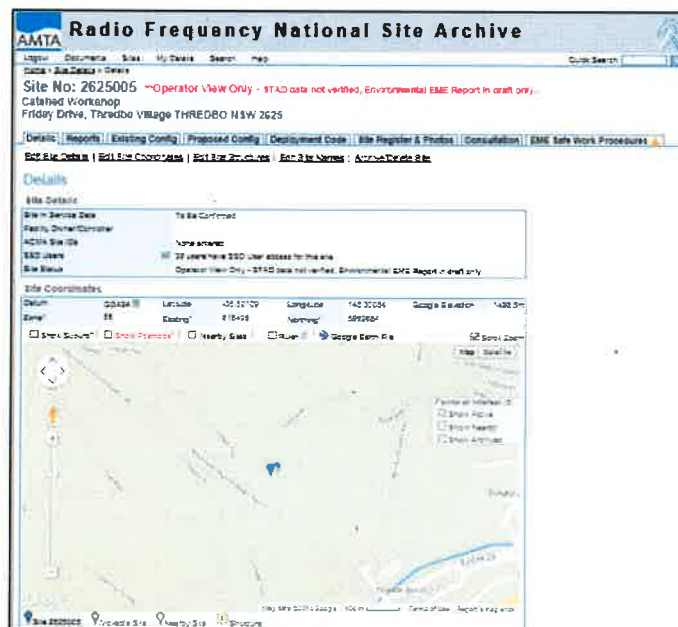


Figure 7: Optus Site RFNSA Site Information Screenshot (Source: www.rfnsa.com.au)