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SPECIAL SUPPLEMENT

Environmental Planning and Assessment Amendment (SEPP 72) Regulation 2002

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

ANDREW REFSHAUGE, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to enable a fee to be charged by the relevant council or the Director-General of the Department of Planning for the assessment of a draft master plan prepared by or on behalf of the carrier of a telecommunications network project under Part 3 of *State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband*.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 105, 137 and 157 (the general regulation-making power).

Clause 1 Environmental Planning and Assessment Amendment (SEPP 72)
 Regulation 2002

Environmental Planning and Assessment Amendment (SEPP 72) Regulation 2002

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (SEPP 72) Regulation 2002*.

2 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

Environmental Planning and Assessment Amendment (SEPP 72)
Regulation 2002

Amendment

Schedule 1

Schedule 1 Amendment

(Clause 2)

Clause 273A

Insert after clause 273:

273A Assessment fee for draft master plans under SEPP 72

- (1) If a draft master plan is prepared by or on behalf of the carrier of a telecommunications network project under Part 3 of *State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband*, the carrier must pay:
 - (a) the relevant council an assessment fee determined by the council, and
 - (b) if the relevant council fails or refuses to approve the draft master plan within 90 days after it was submitted to the council for adoption—the Director-General an assessment fee determined by the Director-General.
- (2) The assessment fee must not exceed the reasonable cost to the relevant council, or to the Director-General and the Department, of assessing the draft master plan, carrying out any associated studies and publicly exhibiting the draft master plan.

State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband

under the

Environmental Planning Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning Assessment Act 1979* in accordance with the recommendation made by the Minister for Planning.

ANDREW REFSHAUGE, M.P.,
Minister for Planning

State Environmental Planning Policy No 72—Linear Telecommunications
Development—Broadband

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State Environmental Planning Policy No 72—Linear Telecommunications
Development—Broadband

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Clause 1 State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband

Part 1 Preliminary

State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband

Part 1 Preliminary

1 Name of Policy

This Policy is the *State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband*.

2 Aims of Policy

The aims of this Policy are:

- (a) to facilitate the provision of modern telecommunications infrastructure in certain parts of New South Wales, and
- (b) to provide a clear framework for assessing and making determinations concerning the provision of this infrastructure, and
- (c) to make all telecommunications network and telecommunications facility development associated with certain telecommunications network projects permissible with consent in certain parts of New South Wales, and
- (d) to make certain aerial subscriber connections to these telecommunications networks permissible without consent in certain parts of New South Wales, and
- (e) to establish guiding principles for development associated with any telecommunications network project, and
- (f) to require the carrier of each telecommunications network project to prepare and obtain approval for a master plan for the development associated with its telecommunications network before seeking development consent, and
- (g) to enable certain telecommunications development listed in a master plan to be classified as exempt or complying development.

State Environmental Planning Policy No 72—Linear Telecommunications
Development—Broadband

Clause 3

Preliminary

Part 1

3 Definitions and notes

(1) In this Policy:

carrier means a carrier who holds a carrier licence granted under section 56 of the Commonwealth Act.

consent authority means the relevant council.

construction management plan means a written document with supporting diagrams, maps and the like that:

- (a) describes the proposed construction works, and
- (b) outlines the proposed work program, and
- (c) identifies all the statutory requirements and conditions of consent applying to the proposed works, and
- (d) sets standards and performance measures for the environmental issues associated with the proposed works, and
- (e) describes what actions and measures would be implemented to manage, minimise or off-set the potential impacts associated with the proposed works, and
- (f) describes how the environmental performance of the proposed works would be monitored during construction, and what procedures would be followed if any non-compliance is detected, and
- (g) establishes detailed procedures for receiving, handling, recording and reporting any complaints about the proposed works, and
- (h) identifies the key personnel involved in the proposed works and provides their contact details, and
- (i) includes detailed procedures for the following matters:
 - (i) erosion and sediment control,
 - (ii) vegetation protection and management,
 - (iii) waste minimisation and management,
 - (iv) site rehabilitation.

environmental management plan means a written document with supporting diagrams, maps and the like that:

- (a) describes the existing telecommunications network, and
- (b) sets standards and performance measures for the environmental issues associated with the proposed works, and

Clause 3 State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband

Part 1 Preliminary

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- (c) describes what actions and measures would be implemented to maintain the telecommunications network over time, and
 - (d) describes how the environmental performance of the telecommunications network would be monitored over time, and what procedures would be followed if any non-compliance is detected, and
 - (e) establishes detailed procedures for receiving, handling, recording and reporting any complaints about the proposed works.

master plan means a written document with supporting diagrams, maps, architectural drawings, photos and the like that:

- (a) provides a detailed description of a proposed telecommunications network, and
- (b) demonstrates how the network would be consistent with any relevant planning controls or guidelines applying to it, and
- (c) identifies and assesses the potential environmental impacts of the network during construction and operation, and
- (d) describes how these impacts would be mitigated or managed over time, and
- (e) identifies (and proposes standards for) components of the proposed network that may be carried out as exempt or complying development.

telecommunications facility means the same as **facility** in the Commonwealth Act.

telecommunications network means the same as in the Commonwealth Act.

telecommunications network project means a telecommunications network described in Schedule 1.

the Commonwealth Act means the *Telecommunications Act 1997* of the Commonwealth, as in force from time to time.

the Department means the Department of Planning.

the Minister means the Minister for Planning.

the NSW Act means the *Environmental Planning and Assessment Act 1979*.

- (2) Notes in this Policy do not form part of it.

State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband Clause 4

Preliminary Part 1

4 Where does this Policy apply?

This Policy applies, in relation to a telecommunications network project described in Schedule 1, to the local government areas specified in relation to the telecommunications network project in that Schedule.

5 Relationship with other environmental planning instruments

- (1) If any other environmental planning instrument, whether made before or after this Policy, contains provisions that are inconsistent with this Policy, this Policy prevails to the extent of the inconsistency, except as provided by this clause.
- (2) This Policy does not prevail over *State Environmental Planning Policy No 14—Coastal Wetlands*, *State Environmental Planning Policy No 26—Littoral Rainforests* or *State Environmental Planning Policy No 44—Koala Habitat Protection*.

Clause 6	State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband
Part 2	Permissibility

Part 2 Permissibility

6 Development permissible with development consent

Development for the purposes of:

- (a) a telecommunications network, or
- (b) a telecommunications facility,

forming part of or associated with a telecommunications network project may be carried out with development consent by or on behalf of the relevant carrier.

7 Aerial subscriber connections to a telecommunications network

- (1) This clause applies to development being:
 - (a) the connection from a subscriber's premises to a telecommunications network project by means of a cable that is wholly or partly an aerial cable, or
 - (b) the erection of a structure that is:
 - (i) necessary to enable such a connection to be made, or
 - (ii) ancillary to the making of such a connection,being a structure that is located between the point of connection of the cable to the subscriber's premises and the point of connection of the cable to the telecommunications network project.
- (2) If, under the provisions of any other environmental planning instrument, development to which this clause applies is prohibited or may be carried out but only with development consent, the development may, despite those provisions, be carried out without the necessity for development consent, if:
 - (a) the subscriber's premises and any land or other thing traversed by the connection do not comprise an item of environmental heritage, and
 - (b) electricity is not supplied to the subscriber's premises by means of an underground connection..

State Environmental Planning Policy No 72—Linear Telecommunications Clause 7
Development—Broadband

Permissibility Part 2

- (3) If, under the provisions of any other environmental planning instrument, development to which this clause applies is prohibited, the development may, despite those provisions, be carried out, but only with development consent, if:
- (a) the subscriber's premises and any land or other thing traversed by the connection comprise an item of environmental heritage, or
 - (b) electricity is supplied to the subscriber's premises by means of an underground connection.
- (4) A cable erected in accordance with this clause, to the extent to which it is an aerial cable, must:
- (a) be consistent with the Austroads publication *Telecommunications in Road Reserves—Operational Guidelines for Installations*, as amended from time to time, and
 - (b) comply with the standards of the appropriate road authority.
- (5) In this clause, ***item of environmental heritage*** means:
- (a) any place, building, work, relic or precinct to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies, or
 - (b) any place, building, work, relic, tree or precinct that is identified as a heritage item, or an item of environmental heritage, or by a similar description, in an environmental planning instrument, or
 - (c) any place that comprises, or any thing that is within, an area identified in an environmental planning instrument as a heritage conservation area.

Clause 8 State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband

Part 3 Master plans

Part 3 Master plans

8 Determination of development applications

- (1) Despite any other provisions of this Policy, a consent authority must not grant consent for development for the purposes of a telecommunications network or a telecommunications facility forming part of or associated with a telecommunications network unless:
 - (a) a master plan has been adopted for the telecommunications network project, and
 - (b) the consent authority has taken the provisions of the master plan into consideration.
- (2) The consent authority may waive the requirement for a master plan, but only if it is satisfied that:
 - (a) the proposed development is of a minor nature, or
 - (b) the current planning controls and guidelines that apply to the proposed development are adequate.
- (3) Subclause (1) does not apply if the consent authority waives the requirement for the master plan under subclause (2).

9 Preparation of master plans

- (1) A draft master plan may only be prepared by, or on behalf of the carrier of a telecommunications network project, following consultation with the consent authority and any other relevant public authorities or corporations.
- (2) A master plan must:
 - (a) describe the proposed telecommunications network in detail, including a full description of each component of the proposed network, the proposed geographic coverage of the network, and the proposed timetable for carrying out the development, and
 - (b) identify the approvals that are to be required before the development may legally be carried out, and
 - (c) demonstrate that the development is consistent with, or complies with, the relevant provisions of any other environmental planning instruments, and

State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband Clause 9

Master plans Part 3

-
- (d) demonstrate that the development is consistent with the guiding principles in Part 5, and
 - (e) describe the environment that is likely to be affected by the development, and
 - (f) identify the following potential impacts of the development during construction and operation:
 - (i) visual,
 - (ii) heritage,
 - (iii) flora and fauna,
 - (iv) health, particularly with regard to electromagnetic radiation,
 - (v) soil and groundwater, particularly with regard to erosion and sediment control,
 - (vi) surface water quality,
 - (vii) air quality, particularly dust,
 - (viii) socio-economic,
 - (ix) traffic, and
 - (g) describe what measures would be implemented during construction and operation to minimise or mitigate these potential impacts, and
 - (h) include a construction management plan for the development, and
 - (i) include an environment management plan for the operation of the development, and
 - (j) identify the components of the development that would be carried out as exempt development, and propose standards for those components, and
 - (k) identify the components of the development that would be carried out as complying development, and propose standards for those components.

10 Consultation

- (1) After receiving a draft master plan, the consent authority must:
 - (a) advertise it in a newspaper circulating in the locality, and
 - (b) exhibit it at the consent authority's offices for at least 30 days for public comment, and

Clause 10 State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband

Part 3 Master plans

- (c) forward a copy of the draft master plan to the Department and any other relevant public authorities for comment.
- (2) The consent authority must take into account any written submissions it receives about the content of the draft master plan during the exhibition period.

11 Adoption of master plans

- (1) After considering a draft master plan, the consent authority may:
 - (a) adopt it without variation, or
 - (b) adopt it subject to conditions, or
 - (c) reject it.
- (2) If the consent authority rejects a draft master plan, or has not adopted a draft master plan within 90 days after the date on which it was submitted, the carrier of the telecommunications network project may refer the draft master plan to the Minister for review, and the Minister may deal with the draft master plan in accordance with subclause (1).
- (3) Before dealing with a draft master plan, the Minister must seek the views of the consent authority and the carrier of the telecommunications network project concerning it.
- (4) If the consent authority adopts a draft master plan subject to conditions and the carrier who submitted the draft master plan (or on behalf of whom the draft master plan was submitted) is dissatisfied with the conditions imposed on the draft master plan, it may refer the adopted master plan to the Minister for review, and the Minister may dispense with or amend the conditions.

12 Amendment of master plans

- (1) A master plan may be amended or replaced by a subsequent master plan.
- (2) If significant issues arise during the implementation of an approved master plan that were not reasonably contemplated in the master plan, the consent authority may request the carrier of a telecommunications project to amend the approved master plan.
- (3) If the consent authority and the carrier cannot agree on amendments requested under subclause (2), the consent authority may refer the matter to the Minister for review.

State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband Clause 12

Master plans Part 3

- (4) After reviewing the matter in consultation with the consent authority and the carrier, the Minister may authorise the consent authority to amend the approved master plan.
- (5) If the consent authority amends an adopted master plan in accordance with subclause (4) and the carrier is dissatisfied with the amendments, it may refer the amendments to the Minister for review, and the Minister may dispense with or modify the amendments.
- (6) Before dispensing with any proposed amendments to an approved master plan, or dispensing with or modifying the amendments to an approved master plan made by a consent authority, the Minister must seek the views of the consent authority and the carrier.

13 Notification and availability of adopted master plans

After adopting a draft master plan, the consent authority or the Minister must:

- (a) place a notice to that effect in a newspaper circulating in the locality, and
- (b) make a copy of the adopted master plan available for public inspection and sale at the consent authority's office during ordinary business hours.

14 Lapsing of a master plan

- (1) A master plan has effect for the period of 5 years from the date on which it is adopted, or for such period as specified in the master plan at the time of its adoption.
- (2) However, the consent authority or Minister may extend the relevant period if it is satisfied that the master plan is operating effectively.

Clause 15	State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband
Part 4	Exempt and complying development

Part 4 Exempt and complying development

15 Exempt and complying development

- (1) In this clause, *approved master plan* means a master plan that is approved under Part 3.
- (2) Development of minimal impact identified as exempt development in an approved master plan specified in Schedule 2 is exempt development for the purposes of the NSW Act.

Note. The Act states that exempt development:

- (a) must be of minimal environmental impact, and
- (b) cannot be carried out on land that is the critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), and
- (c) cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).

- (3) Development identified as complying development in an approved master plan specified in Schedule 2 is complying development for the purposes of the NSW Act.

Note. The Act states that development cannot be complying development if:

- (a) it is carried out on land that is the critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), or
- (b) it is on land within a wilderness area (identified under the *Wilderness Act 1987*), or
- (c) there is an item of environmental heritage on the land that is subject to an order or listing under the *Heritage Act 1977*, or an environmental planning instrument, or
- (d) the development is designated development, or
- (e) the development is State significant development, or
- (f) the development requires concurrence, except a concurrence of the Director-General of the National Parks and Wildlife in respect of the development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat (identified under the *Threatened Species Conservation Act 1995*).

- (4) Development is exempt or complying development only if it complies with the development standards and any other requirements for the development in the approved master plan in Schedule 2.

State Environmental Planning Policy No 72—Linear Telecommunications Clause 15
Development—Broadband

Exempt and complying development Part 4

- (5) A complying development certificate issued for any complying development is subject to the relevant conditions for the development specified in Schedule 2.

Clause 16 State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband

Part 5 Guiding principles for telecommunications network development

Part 5 Guiding principles for telecommunications network development

16 Guiding principles

(1) The guiding principles for development for the purposes of a telecommunications network or a telecommunications facility are:

(a) **Servicing needs**

The consent authority must consider the contribution that the development would make towards meeting current and future servicing needs for telecommunications of the locality (including future servicing needs of newly developing areas).

(b) **Visual impact**

The consent authority must consider whether the visual impact of the development could be minimised by any one or more of the following:

- (i) by integrating the development with the design and appearance of any building or structure on or within which it is located,
- (ii) by screening, where practical, any equipment associated with the development so as to reduce its visibility,
- (iii) by avoiding the obstruction of views of significant vistas, significant landmarks or items of environmental heritage,
- (iv) by ensuring that the development as carried out is in keeping with the streetscape or the surrounding environment, or both,
- (v) by ensuring that the colour and finish of the development is in keeping with the locality,
- (vi) by ensuring that the scale of the development is in keeping with the locality, bearing in mind that the scale may be affected by the intended coverage of the network or facility.

State Environmental Planning Policy No 72—Linear Telecommunications
Development—Broadband

Clause 16

Guiding principles for telecommunications network development

Part 5

(c) **Co-location of facilities**

Telecommunications facilities should be co-located with other utilities wherever this is technically practical, commercially viable and achieves the best environmental outcome and, in particular:

- (i) telecommunications lines should be located within an existing underground conduit or duct, and
- (ii) antennae (and similar structures) should be attached to existing utility poles, towers, structures, buildings or other telecommunications equipment so as to minimise clutter.

(d) **Health standards**

Telecommunications facilities must be designed, installed and operated to comply with standards relating to human exposure to electromagnetic energy appearing in any applicable codes or standards made under any applicable law of the Commonwealth.

(e) **Installation**

In relation to the installation of telecommunications facilities:

- (i) steps should be taken to minimise any obstruction of pedestrians and traffic, and disruption to the enjoyment of adjoining properties, while the development is being carried out, and
- (ii) work should be carried out during times that cause minimal disruption to public access and the enjoyment of adjoining properties, and
- (iii) traffic control measures should be taken during construction in accordance with AS 1742.3—1996 *Manual of Uniform Traffic Control Devices*, and
- (iv) open trenching should be guarded in accordance with AS 1165—1982 *Traffic Hazard Warning Lamps*, and
- (v) steps should be taken to minimise soil erosion arising from the siting and installation of telecommunications facilities, and
- (vi) threatened species and critical habitats should be avoided, and disturbance to vegetation should be minimised and, at the conclusion of the work, should be restored by the carrier to the satisfaction of the relevant

Clause 16 State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband

Part 5 Guiding principles for telecommunications network development

landowner and, if the work is being carried out under a development consent, to the satisfaction of the consent authority, and

- (vii) street furniture, paving and other existing facilities removed or damaged during construction should be reinstated or rectified by the carrier and the costs of doing so should be borne by the carrier.

(f) **Road reserve standards**

Telecommunications facilities in road reserves must:

- (i) be consistent with the Austroads publication *Telecommunications in Road Reserves—Operational Guidelines for Installations*, as amended from time to time, and
- (ii) comply with the standards of the appropriate roads authority.

State Environmental Planning Policy No 72—Linear Telecommunications
Development—Broadband

Telecommunications Network Projects

Schedule 1

Schedule 1 Telecommunications Network Projects

(Clause 3)

The proposal by STI Communications Pty Limited to construct and operate a Broadband Communications Network in the local government areas of the Cities of Lake Macquarie and Newcastle.

State Environmental Planning Policy No 72—Linear Telecommunications
Development—Broadband

Schedule 2 Approved master plans

Schedule 2 Approved master plans

(Clause 15)

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