

**CHAIRPERSON & COMMITTEE MEMBERS
ENVIRONMENT & COMMUNITY DEVELOPMENT COMMITTEE**

4 FEBRUARY 2010

Meeting Status : **Public**

Purpose of Report: For **Decision**

**ADOPTION OF A POLICY FOR THE ESTABLISHMENT OF
TELECOMMUNICATION INSTALLATIONS BY NETWORK
OPERATORS ON COUNCIL LAND**

PURPOSE OF REPORT

- 1 To consider for approval a policy in relation to applications by telecommunications network operators to establish facilities on Council-owned land.

SIGNIFICANCE OF DECISION

- 2 The recommendations in this report do not trigger the Council's significance policy.

BACKGROUND

- 3 The installation of cellular sites in residential areas is a subject that has caused a great deal of difficulty for a number of local authorities across New Zealand. Residents are generally reluctant to accept a cellular site in close proximity to their houses, as there is a belief that emissions from such sites are unsafe. The installation of such sites and the level of emissions that are permitted are covered in a number of technical standards and are subject to ongoing monitoring but the perception remains that such sites are unsafe and that they should be located away from residential locations.
- 4 With the adoption of the National Environmental Standard by the government, Council has extremely limited powers to limit location of cellphone towers and other telecommunications equipment in terms of emissions. Provided that the proposals conform to minimum emission standards, Council must confine itself in any resource consent process to issues of visual amenity, such as height. In terms of the road corridor, the Council has limited power to restrict location. It does have the ability to set a policy for potential location of facilities on other Council owned land.
- 5 In early 2009, Vodafone installed a cellular antenna on an existing mast on the Trig Hill Reserve at Waikanae Beach. Approval for the installation had been given some time previously, without consultation with the adjoining residents and the matter had not been previously considered by the Council. Vodafone have a long term licence for the site on commercial terms.

- 6 The adjacent residents of Trig Hill were aggrieved both by the installation of a cellular installation in their neighbourhood and by the process by which it came to be located there. That concern was exacerbated by the inability of the Council to provide the residents with the occupation licence terms and conditions because of the confidentiality clause included in the licence.
- 7 Shortly afterwards a second new cellular installation was applied for on the Riwai high level reservoir by the new entrant company 2Degrees. The site was already extensively used for telecommunications purposes, was further away from residential property and therefore less contentious but the issues and principles that the proposed policy seeks to mitigate were present.
- 8 It was apparent when managing the issues associated with the Trig Hill installation that Council did not have an adequate policy framework with which to consider applications for the installation of cellular equipment on Council land, including prior engagement with the community living in close proximity.
- 9 It was clear that a policy framework which provides some certainty both to the community and to network operators setting out how Council would treat applications for cellular installations needed to be developed.
- 10 A number of other local authorities have encountered similar problems and many have developed and adopted policies to guide the decision making in such situations. Porirua City Council have had a number of similar issues in residential areas and are adopting a policy which will guide their decision making with respect to cellular installations. That policy has been used as the basis for a suggested policy for the Kāpiti Coast District Council although it has been modified to suit the circumstances of this district.

CONSIDERATIONS

Issues

Topography

- 11 On the Kāpiti Coast district, there are a number of elevated locations which are very suited to hosting cellular sites and many of these locations are reserves in or adjacent to residential areas.
- 12 Generally the alternative to using the natural elevation of hills is to place antennae on street light poles at increased heights. These installations are generally closer to people's homes and can be more intrusive. The network operators have rights to position their equipment on legal road and the controls able to be exercised by the Council to mitigate against the effects of them are reduced.
- 13 In many instances cellular installations on legal road may not require resource consent and therefore it is conceivable that there is no opportunity for public involvement without the active facilitation of that involvement by the local authority.
- 14 Cellular reception largely depends on line of sight for interference free reception and to provide consistent network coverage. Companies operating cellular

networks need to provide a series of antennae through which signals pass and the continuity of network coverage are guaranteed. Cellular network companies state that the current trend is for more antennae operating at lower emission levels rather than fewer but larger and more powerful antennae.

- 15 The demand for increased cellular services such as the third generation cellular network and the use made of it for the transfer of data as well as for voice services means that there is an ongoing technical requirement to continue to upgrade existing equipment in addition to installing new equipment. The recent Trig Hill installation was to provide a third generation network service capability to the area. Telecom is also upgrading their existing equipment in Waikanae at Fairway Oaks for a similar reason.

Proposed Policy

- 16 The proposed draft policy for the installation of cellular equipment on Council land is **attached**. It deals with all circumstances where cellular equipment is proposed for Council land or assets and sets out how the Council will manage such applications. The policy refers to the Council acting in its landowner capacity and not as a regulatory authority for which there is statutory and well established guidelines, principles, obligations and appeal processes.
- 17 The policy acknowledges the commercial reality of a viable competitive telecommunications network and the significance of such a network to both commercial and residential life in the district.
- 18 The proposed policy clarifies the distinction between companies with network operator status and the rights that brings to their operations within the road corridor and the desire to locate equipment on land or buildings owned by the Council sitting outside the road corridor.
- 19 The policy will have the greatest effect in relation to reserves or other Council land or buildings where Council acts in its land owner capacity. In these locations the Council has the sole discretion whether to permit or decline cellular installations on its particular asset.
- 20 It also clarifies the rights of persons living in the vicinity of any proposed installation to be consulted and to have a genuine opportunity to have alternative locations identified and evaluated prior to the confirmation of any particular site.
- 21 The proposed policy is based on a three way partnership model rather than an imposed solution. The policy means that by the time Council is required to make a final decision, the process by which sites are identified has included real community engagement and that the level of acceptance of the preferred site should be increased.

The Occupation Licence

- 22 The occupation instrument for use of Council land (the licence) also requires modification. A Kapiti licence agreement will be developed and will be the base document for any future occupation of Council land (Hutt City Council use a generic instrument for all of such occupations which deals with all issues of concern to them).

- 23 The current telecommunication occupation instruments for existing council sites contain confidentiality clauses. These clauses came at the request of the applicant companies who regard them as commercially sensitive to their business and therefore do not wish them to be openly available to their competitors. While that may be a valid concern for the applicant companies it causes Council difficulties with residents and does not contribute to the perception of an transparent and open process.
- 24 The Trig Hill licence was only released to a local property owner at the direction of the Office of the Ombudsman and future licence documents will make clear that should the Chief Executive consider that there are sufficient grounds within the Local Government Official Information and Meetings Act (LGOIMA) to release future licences, they will be released.

Financial Considerations

- 25 There are no financial considerations relating to the adoption of the policy. The policy makes clear that costs incurred by the Council in processing applications for cellular and antennae sites will be recovered from the network operator in question and that those costs may include the cost of staff time in dealing with the application.

Legal Considerations

- 26 The legislation relating to the installation of cellular sites and rights of network operators is clear and has not generally caused the Council any undue concerns. The Council in preparing this policy is acting within its land owner capacity on land that it either owns or is the administering authority for (commonly land subject to the Reserves Act 1977) and therefore is able to make a determination within its own authority.

Delegation

- 27 The Environment & Community Development Committee has the following delegation to adopt the proposed policy:

Policy Development

7.1 Authority to develop (within any wider existing strategic framework) policies and work programmes that support the social, economic, environmental and cultural wellbeing of the community and provide assurance to Council that associated projects are managed efficiently, effectively and with due regard to risk.

Consultation

- 28 There has been no prior engagement with either network operators or community groups in the preparation of the proposed policy.
- 29 There will be considerable public interest in the proposed policy. The proposed draft policy should be subject to consultation with the public using a process similar to the special consultative procedure. During the Trig Hill issue local residents made clear that they wished to comment on and submit to the proposed

policy. It is likely that the local media will also have an active interest in the proposed policy.

- 30 Previously identified stakeholders including the major telecommunications companies will be sent a copy of the proposed draft policy.

Policy Implications

- 31 The new policy is consistent with the Community Outcomes and seeks to ensure that the principles of community engagement and transparency are entrenched in the processing of any future cellular installation application.
- 32 As part of the policy the Council will develop its own legal instrument of occupation (expected to be a licence) which will be used for all future applications for cellular sites. The cost of preparing a licence for a specific site will lie with the applicant but the base content of all future licences will be consistent and future licences will not use applicants' standard licences (as was the case with the Trig Hill licence).

Publicity Considerations

- 33 It is usual practice to advertise consultation documents through local media, Council offices and the Council website. A suitable press release will be issued dealing with the proposed policy and the underlying need for it.

Other Considerations

- 34 There are no other considerations.

CONCLUSION

- 35 During the installation of the Trig Hill cellular equipment it became apparent that the process for dealing with requests for telecommunications sites lacked a policy base and had the potential to exclude public participation.
- 36 There is a general level of disquiet concerning the placement of cellular antennae in residential areas although network operators broadly have rights to use legal roads as sites for their equipment. Many local authorities have encountered difficulties in dealing with applications for new cellular sites and some have responded by adopting suitable policies which set out how such applications are to be handled.
- 37 The proposed draft policy deals with applications for the use of Council owned land or buildings and sets out to develop a process which is fair and transparent to network operators and residents. The policy is based on recognition of the necessity for and value of a robust telecommunications network.
- 38 The policy sets out the process that the Council will adopt in dealing with applications from its role as a landowner. The policy does not set out any process for council acting in its regulatory role as those processes have a well established statutory requirement.

RECOMMENDATION

- 39 The proposed draft Policy on Establishing Cellular Telecommunications Installations on Kapiti District Council land and buildings be adopted for public consultation.

Report prepared by:

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ATTACHMENTS:

- *Proposed policy for consideration of installation of cellular equipment on Council land*