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## PLANNING SYSTEM

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Conditions of consent for fibre-ready facilities and telecommunications infrastructure

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**Related** nil

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# Conditions of consent for fibre-ready facilities and telecommunications infrastructure

The purpose of this circular is to advise local councils and other consent authorities that all development consents (unless exempted) should include conditions to ensure that modern telecommunications infrastructure is provided in respect of all premises to be constructed in developments. This includes fibre-ready passive infrastructure (like pit and pipe or poles), spaces and pathways and other telecommunications infrastructure.

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## Introduction

In September 2011, the Commonwealth *Telecommunications Act 1997* was amended to ensure fibre-ready telecommunications facilities like pit and pipe are installed by constitutional corporations to all individual lots and premises in new real estate development projects to enable fibre to be readily connected (refer to definition 'fibre-ready facility' below) to any premises that is being, or may be, constructed on those lots, subject to exemptions.

In March 2015, the Commonwealth released the *Telecommunications in new developments* (TIND) policy which outlines developer responsibilities. Any developer subdividing land is responsible for ensuring telecommunications are brought to the development and reticulated within it, and made available to each lot of land. Developers of multi-dwelling units would be responsible for ensuring telecommunications are reticulated to individual units within the development.

The implications of not installing telecommunications infrastructure in new developments could include additional delays and increased costs from retrofitting developments and new premises. It is recommended that the installation of fibre-ready facilities and installation of telecommunications infrastructure be included as a condition of consent for all developments *unless exempted* (see below). This condition would cover constitutional corporations and

other unincorporated developers (e.g. sole traders, partnerships).

This circular recommends the adoption of a model condition of consent regardless of:

- whether the land is a new subdivision, urban infill or urban renewal site
- size or type of development being undertaken
- whether land and/or buildings are being sold or leased within the development.

The proposed model condition would ensure that telecommunications infrastructure is considered early in the planning process, similar to other essential services such as water, electricity, gas and sewage.

## Proposed model condition

It is recommended that consent authorities adopt the following model condition when issuing development consents (unless exempted):

*Prior to the issue of the Subdivision or Construction Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:*

- (i) *the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or*

may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.

and

- (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

(Note real estate development project has the meanings given in section 372Q of the Telecommunications Act).

## Exemptions

Consistent with the Commonwealth law, this model condition is not recommended to apply:

- where a development has met the requirements for an exemption in line with the *Telecommunications (Fibre-ready Facilities – Exempt Real Estate Development Projects) Instrument 2016* and published on the register maintained by the Department of Communications and the Arts
- where existing non-fibre ready facilities installed before 27 September 2011 are largely reused, with or without minor supplementary facilities installed, such as the refurbishment of an existing building or the 'knock down rebuild' of a house subject to specific conditions (however, the preference is for fibre-ready to be used where possible)
- where the development is exempted by the Federal Minister for Communications by legislative instrument under the exemptions provisions in Part 20A of the Telecommunications Act.

(Note that clauses 5, 7 and 8 of the Commonwealth's *Telecommunications (Fibre-Ready Facilities in Real Estate Development Projects and Other Matters) Instrument 2011* detail circumstances in which non-fibre ready facilities (generally underground pit and pipe) can be installed, subject to specific limitations.

The model condition is also not recommended to apply:

- where the development is a minor subdivision as defined in the *Environmental Planning and Assessment Regulation 2000*
- to land in a rural zone (not including RU5 Village), RE1 Public Recreation, E1 National Parks & Nature Reserves, E2 Environmental Conservation or W1 Natural Waterways Zone or the equivalent if the responsible authority is satisfied that connection to telecommunication services is not warranted
- where the development is to strata title an existing building already connected to

telecommunication services.

In all instances, a person or group responsible for a development should consider obtaining independent legal advice on whether an exemption from installing fibre-ready facilities under the Telecommunications Act may apply. While an exemption may apply from the model condition at the State level, this does not necessarily mean that an exemption applies from the Telecommunications Act.

## Definitions

**Fibre-ready facility** has the meaning given in section 372W of the Telecommunications Act. Generally speaking, a fibre-ready facility is:

- (i) for a subdivision - passive infrastructure such as underground ducting or "pit and pipe" or poles that is designed and installed close enough to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots, noting that such cabling has special deployment requirements - refer to Part 20A of the Telecommunications Act. In most instances passive infrastructure installed will be underground infrastructure such as pit and pipe. In areas where it is not reasonably practical to install underground infrastructure, above ground infrastructure (such as poles or conduit) that will support the ready deployment of fibre may be installed, where the consent authority permits such above ground infrastructure to be installed
- (ii) for an individual premises – as for a subdivision, and also includes ducting from the street pit to the proposed location at the premises of the network termination device.

**Constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution of Australia applies – that is, a trading or financial corporation formed in Australia, or a foreign corporation.

## Relevant specifications

Carriers that install fibre (such as NBN Co Ltd) have their own specifications for installing fibre-ready facilities including pit and pipe. The Communications Alliance has also published a guideline: *Fibre Ready Pit and Pipe Specification for Real Estate Development Projects (G645:2011)*.

Specifications may also be set in legislative instruments under the Telecommunications Act such as conditions specified under Part 20A of the

Telecommunications Act, any technical specifications under Part 21 of the Telecommunications Act and/or applicable industry codes or industry standards (including those made by the Australian Communications and Media Authority).

### **Further Information**

For further information please contact Service NSW on 13 77 18.

Department of Planning and Environment circulars are available at:

[planning.nsw.gov.au/circulars](http://planning.nsw.gov.au/circulars)

### **Authorised by:**

**Carolyn McNally**  
**Secretary**

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**Important note:** This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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