Co Existing with Telecommunications Carriers

Presented by:

Jason Ip - Manager Operations

Austin Morris – Manager Works

Riverina Water County Council

Riverina Water

Also on behalf of:

NSW Water Directorate

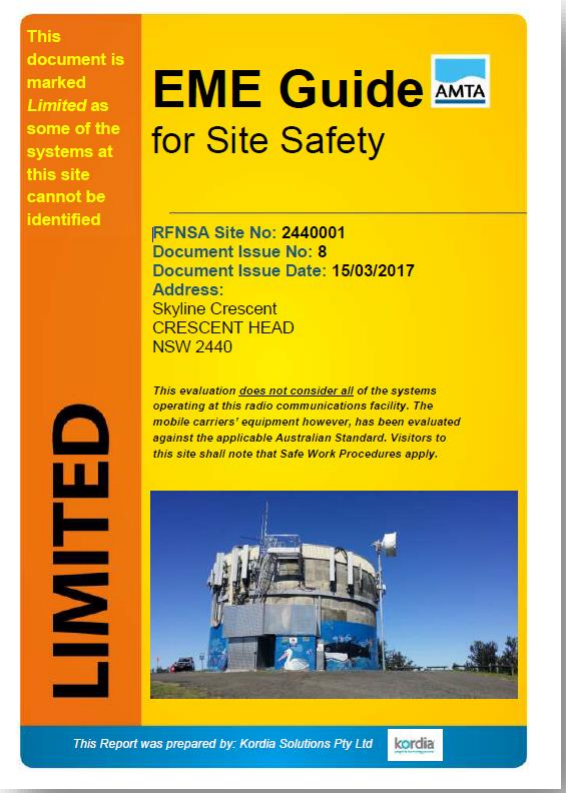
WATER DIRECTORATE

This is a telecommunications facility. For information about this site visit www.rfnsa.com.au
Or contact the facility manager.
NSA Site Number:

Private Prop
Authorised
Persons Only
This is a telecommunications facility. For information about this site visit
Or contact the facility manager.
NSA Site Number:
Telstra

EME Guides

- Be available to site owners
- Be aware of restriction zones
- Limited



This document is marked *Limited* as some of the systems at this site cannot be identified

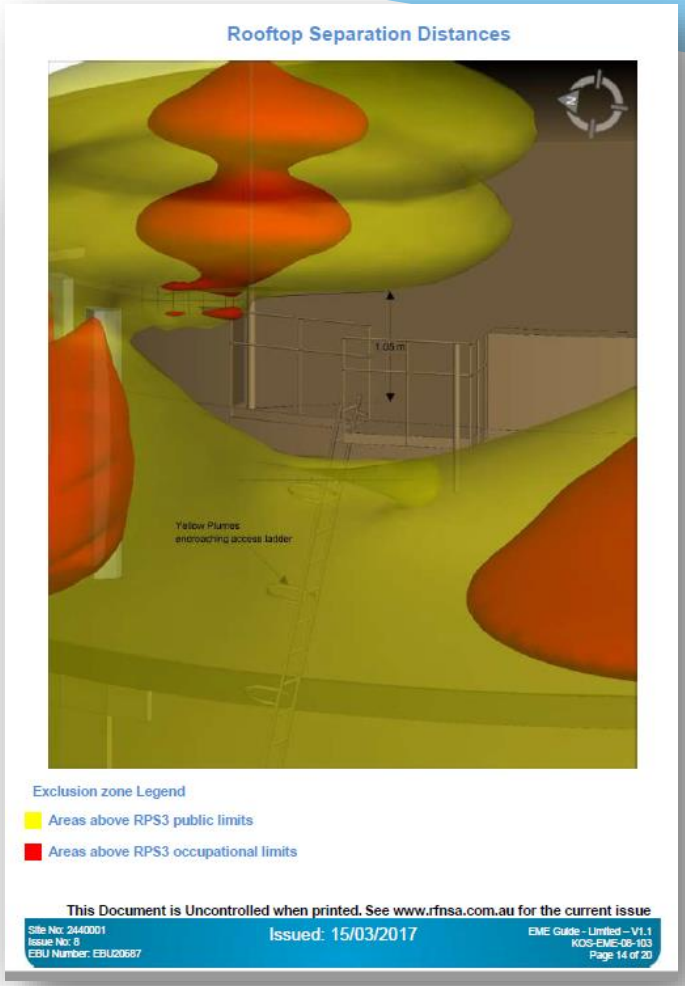
EME Guide AMTA
for Site Safety

RFNSA Site No: 2440001
Document Issue No: 8
Document Issue Date: 15/03/2017
Address:
Skyline Crescent
CRESCENT HEAD
NSW 2440

This evaluation does not consider all of the systems operating at this radio communications facility. The mobile carriers' equipment however, has been evaluated against the applicable Australian Standard. Visitors to this site shall note that Safe Work Procedures apply.

LIMITED

This Report was prepared by: Kordia Solutions Pty Ltd kordia



Rooftop Separation Distances

Yellow Plumes encroaching access ladder

Exclusion zone Legend
Areas above RPS3 public limits
Areas above RPS3 occupational limits

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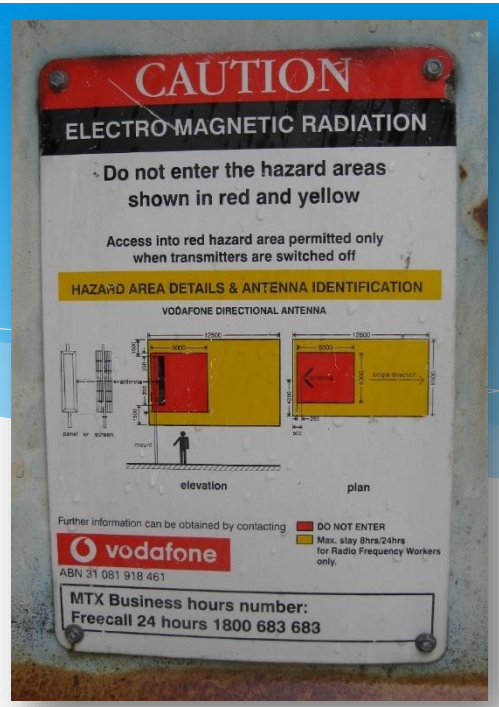
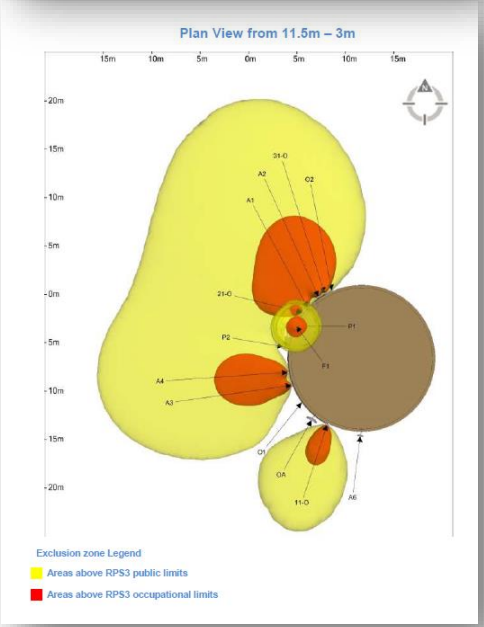
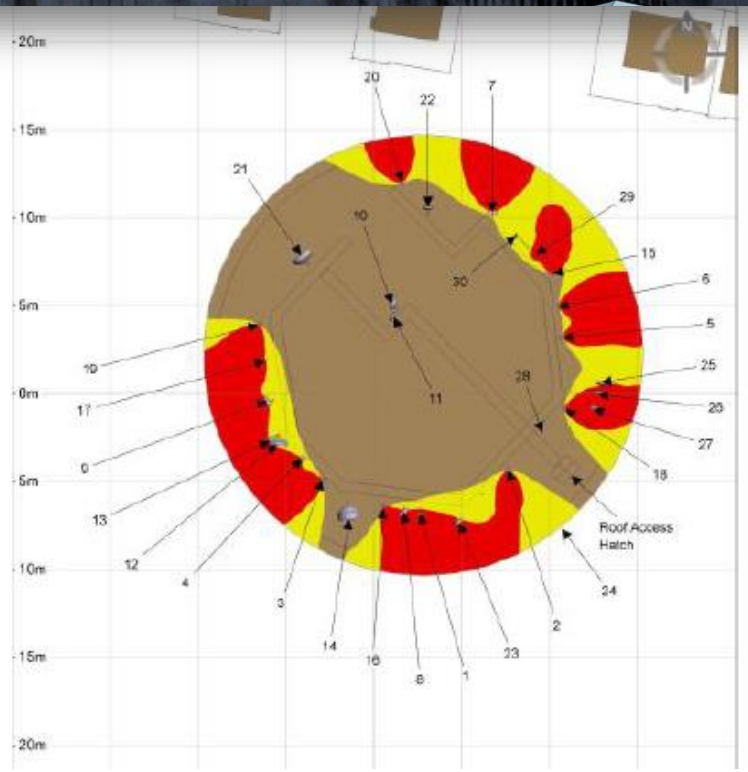
Site No: 2440001
Issue No: 8
EBU Number: EBU20687
Issued: 15/03/2017
EME Guide - Limited – V1.1
KOS-EME-08-103
Page 14 of 20

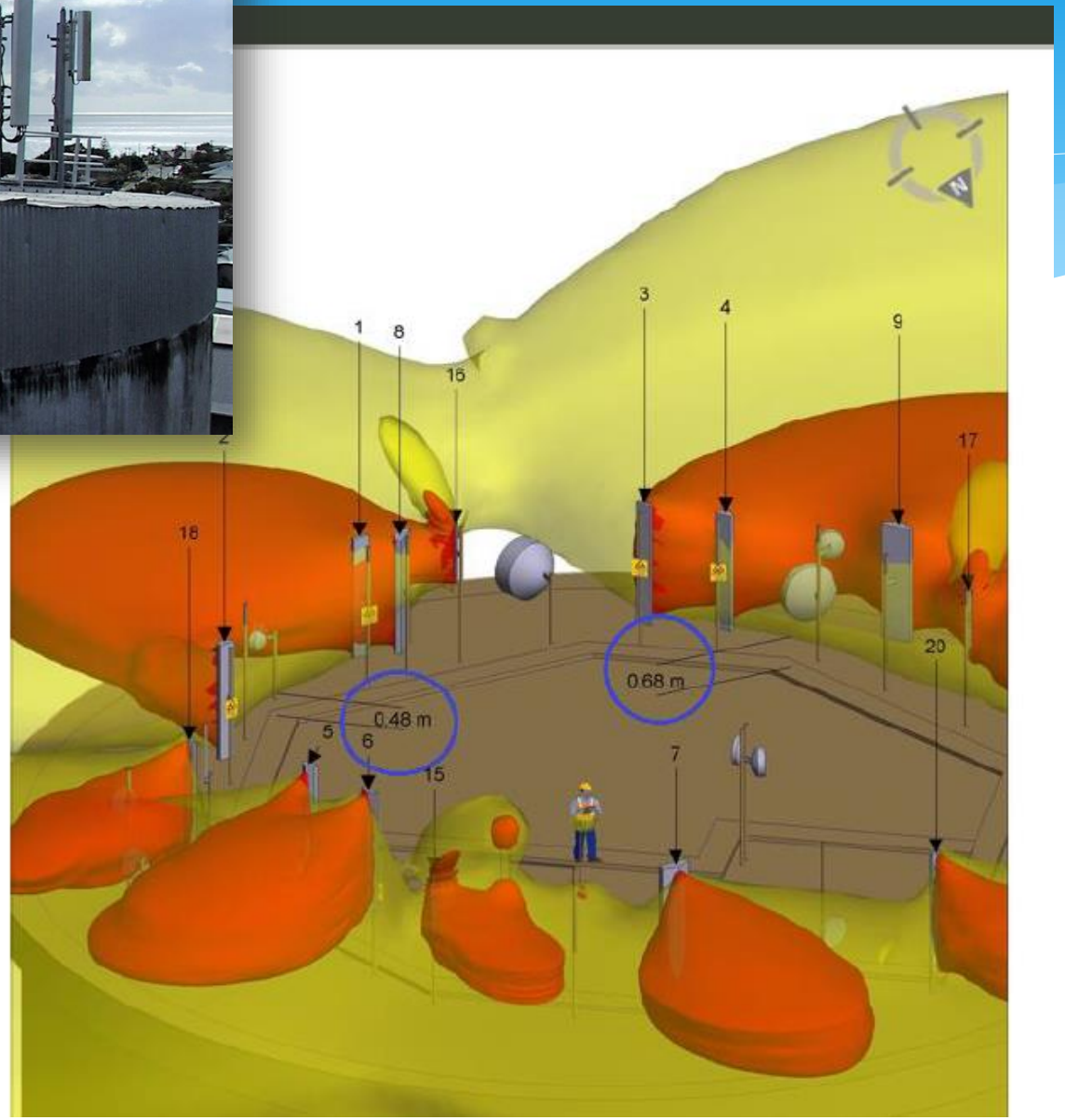




Plan View from 11.5m – 3m

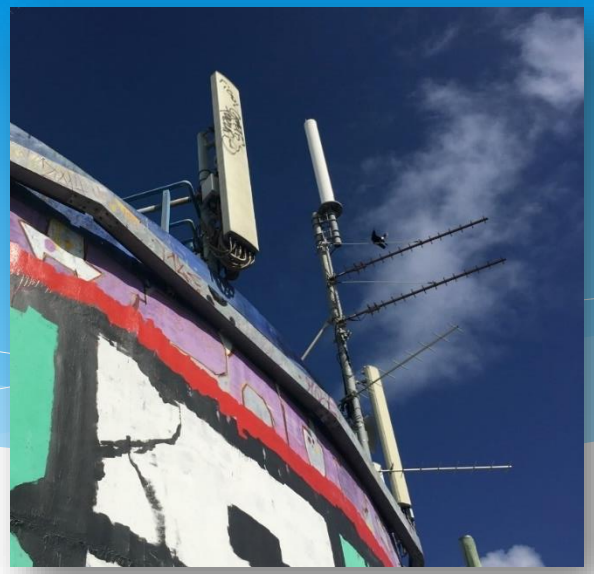
Exclusion zone Legend
Areas above RPS3 public limits
Areas above RPS3 occupational limits


20m
15m
10m
5m
0m
5m
10m
15m
20m
Roof Access Hatch

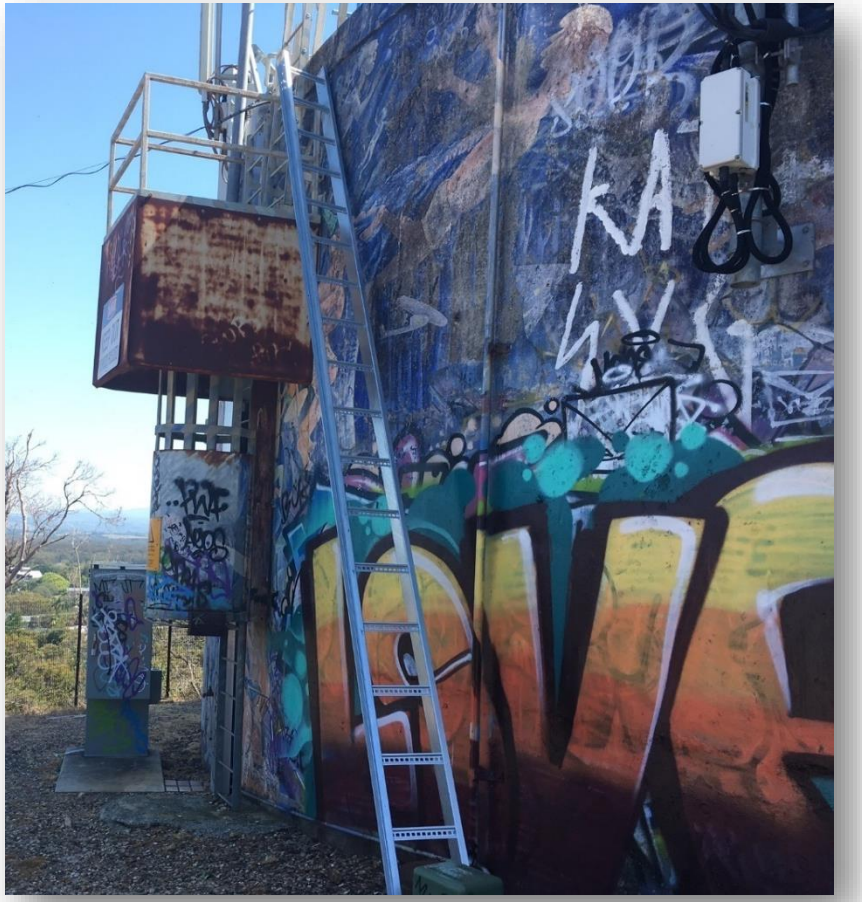

0.48 m
0.68 m

Site security compromised

Vandal access

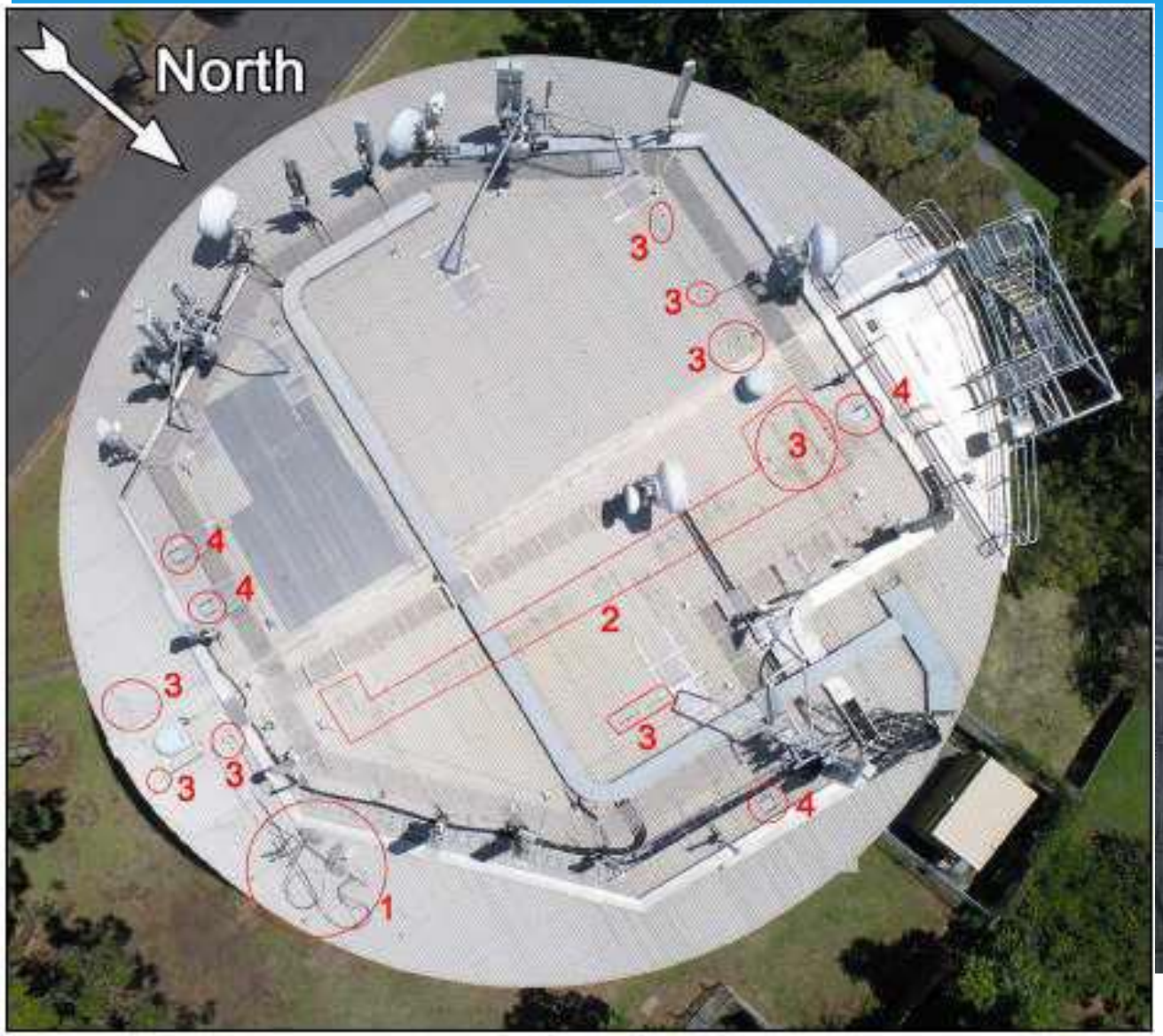


Telco Sub Contractors



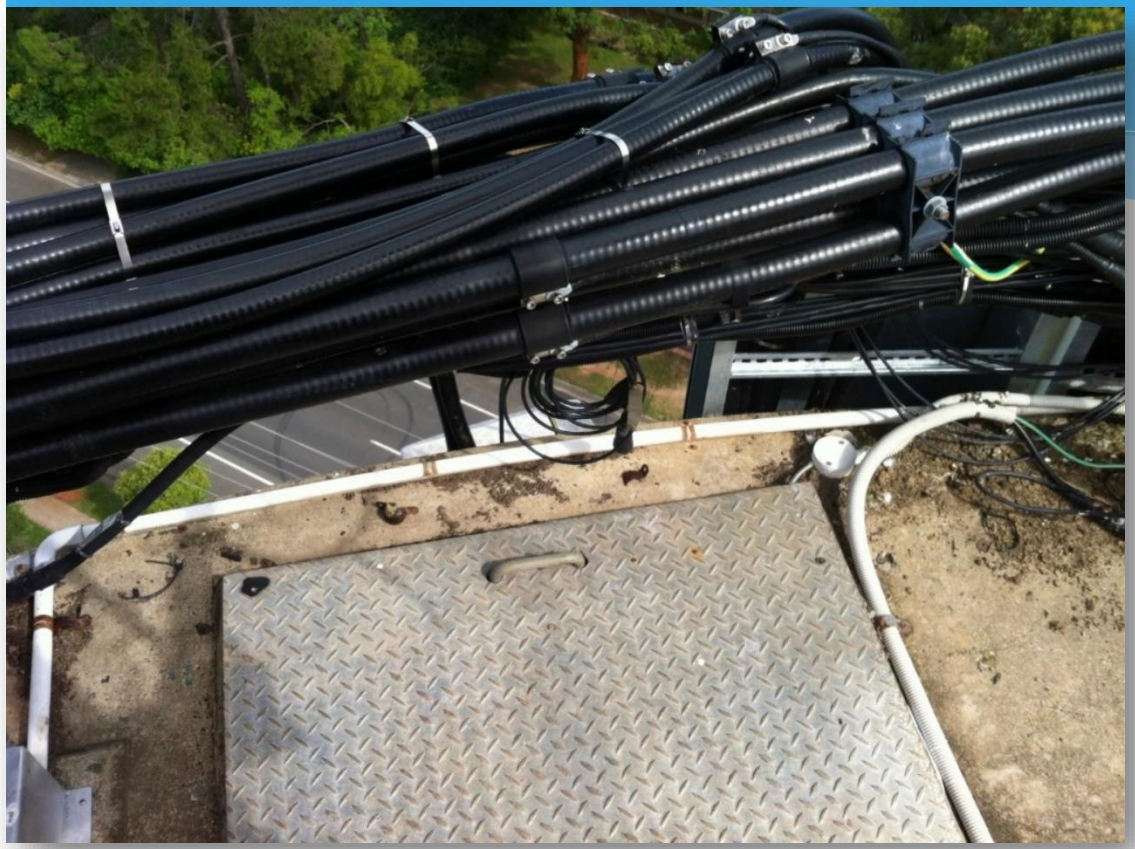
Debris & Site Restriction

Water Quality Risk


North
3
3
3
4
3
4
4
2
3
3
3
3
4
1

Bird roosting areas

Integrity check



Ongoing maintenance

Site safety

Access
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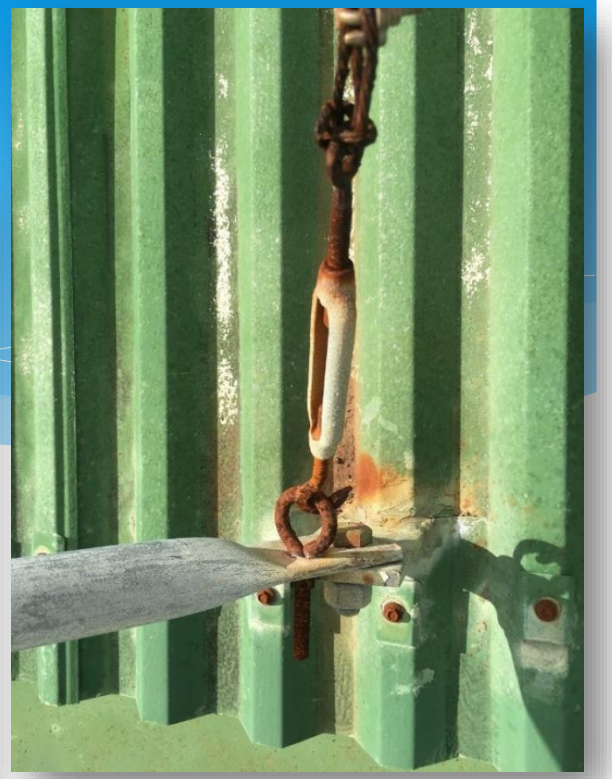
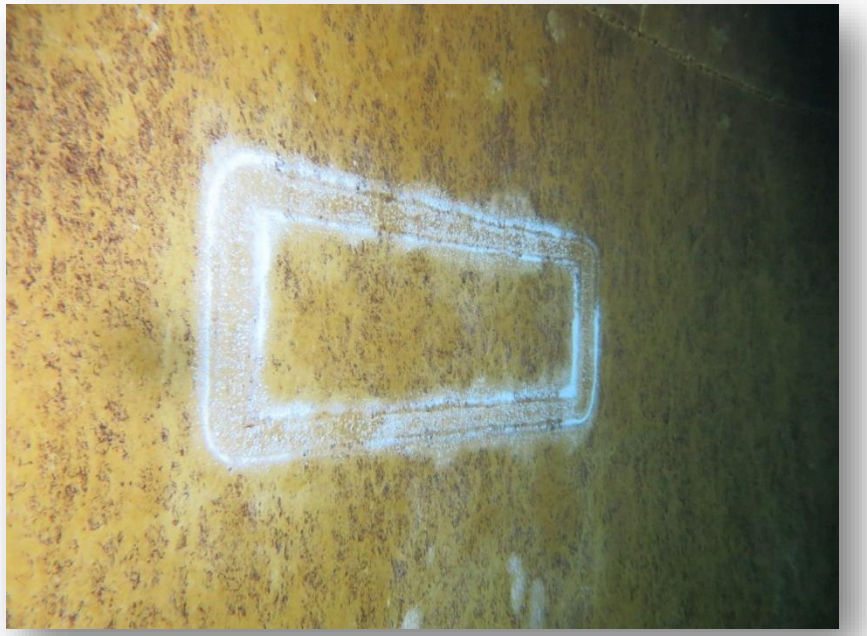


Internal coating damaged



Impacts from Telco Carriers on Reservoirs

* Impacts of Telcos associated with being hosted on reservoir structures include:
  * Compromised Site security
  * Workers Health and Safety – employees and third parties
  * Restricted reservoir access/egress:
  * Difficulties to water supply operations and asset management
  * Increased risk to water quality and public health

Why are these issues arising?

1) Landowners are not aware of their rights
2) Landowners don't effectively lodge complaints e.g.
    * 1 complaint lodged with ACMA since 2011 (from water industry)
    * Few complaints lodged with TIO
3) Legacy issues from change of landowner
4) Poor contracting by Landowners
5) Strong legal approach by some telco's and limited resourcing of landowners
6) Carriers and their subcontractors not behaving appropriately

Is the "System" Broken?

* We cannot say the "system is broken" if we haven't used the system
* A Telco Steering Committee comprising WSAA, NSW and QLD Water Directorates formed in July 2017
* The Steering Committee identified that water authorities are not fully aware of Telco legislation and processes that could help better manage Telcos on reservoirs
* This paper and presentation is to begin educating and motivating LWUs to:
  1) Use the system to attempt to better coexist with Telcos (outside of commercial agreements)
  2) Promote feedback of system's deficiencies to the Regulator and industry associations

Telecommunications Legislation Framework

* Current Commonwealth telecommunications legislation was introduced when Telstra was privatised in the late 1990s
  * Provides substantial powers and immunities for Telcos to access, install and operate communication facilities on private property, especially if the facility is categorised as Low Impact under the *Telecommunications (Low-impact Facilities) Determination 1997*).
  * Other supporting legislative instruments:
    * Telecommunications Code of Practice 1997
    * Telecommunications Regulations 2001
    * And various Telco Industry Standards and Industry Codes registered with ACMA
* Significant changes in the telecommunications and water industries highlight increased incompatibility between Federal and State legislations

Telco Act, Schedule 3 – Carriers power and immunities

* **A carrier may enter on land and exercise any of the following:**
  * (a) the power to inspect the land to determine whether the land is suitable for the Carrier's
  * purposes;
  * **(b) the power to install a facility on the land**; and
  * (c) the power to maintain a facility that is situated on the land.
* **The power to install a facility may only be exercised if:**
  * (a) the Carrier holds a facility installation permit;
  * (b) **the facility is a Low Impact Facility**; or
  * (c) the facility is a temporary facility for use by, or on behalf of, a defence organisation for defence purposes

Telecommunications (Low-impact Facilities) Determination 1997

Low impact Facilities are considered to have a low visual impact because of their size and location. At the time the Telco Act was drafted, they were considered to be less likely to raise significant planning, heritage, or environmental concerns.

"public utility structure" is specifically mentioned in Part 7 of the *Determination's* Schedule so water supply reservoirs are considered as a Low Impact facility more often than not

Telecommunications (Low-impact Facilities) Determination 1997

* The *Determination* allows the Telco to install equipment on Low Impact Facilities without consent of the Landowner and without obtaining State or Local government approvals
* If the Telco wants to enter and install equipment under the *Determination*, there's stringent procedural requirements for both Telco and Landowner
* The Land Owner cannot refuse access, however, the process ***must*** begin with the Telco issuing a Land Access and Activity Notice (LAAN) at least 10 business days before commencing works eg. for new installations
* If no response/objections from land owner, the works are automatically consented
* Strict procedural requirements to object and negotiate with Telco.

Initiating Negotiations with Telco

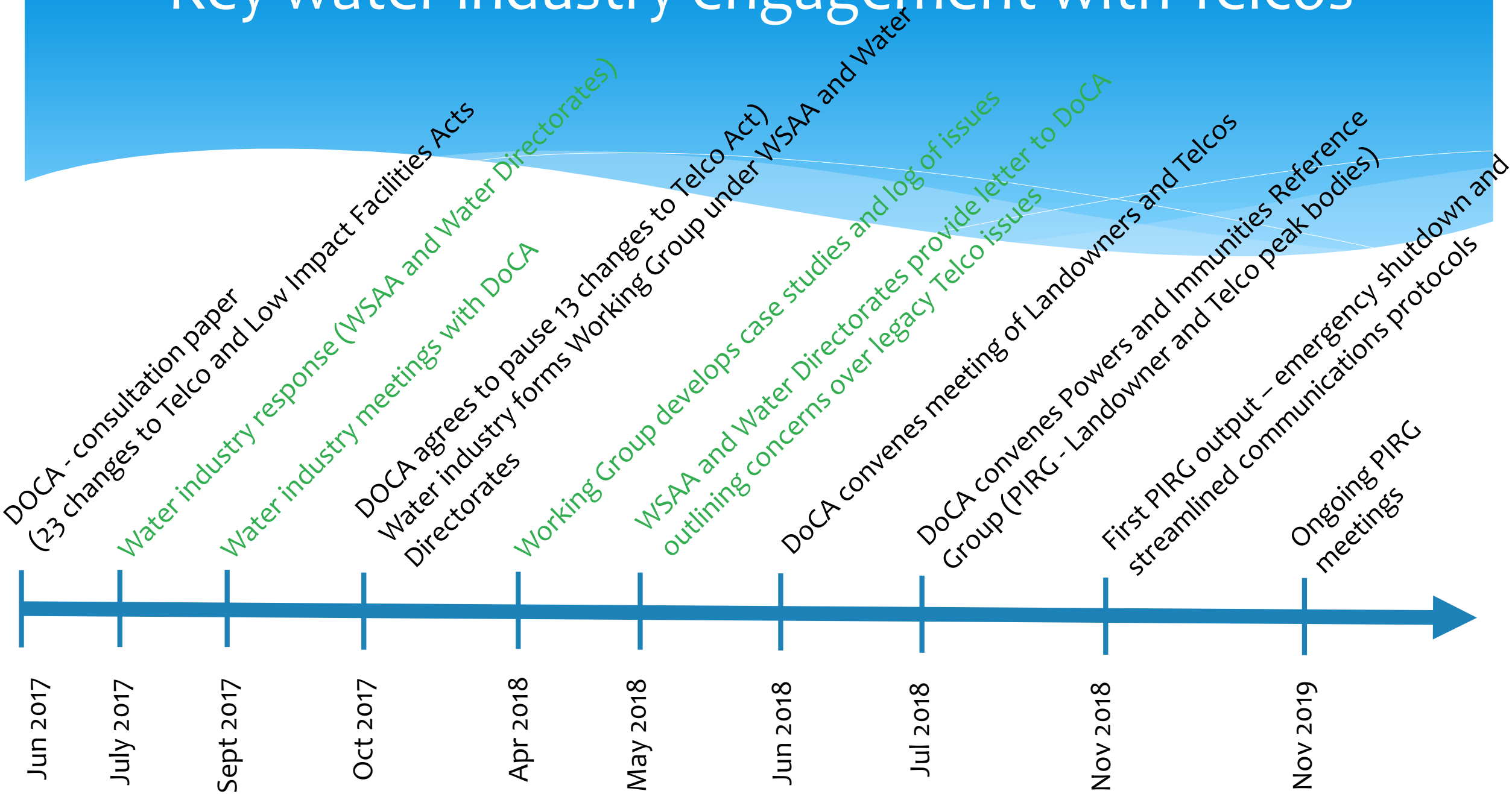
* Onus is on Landowner to lodge an Objection to a Telco's LAAN to initially raise/discuss/clarify issues with the Telco and begin meaningful/constructive dialogue.
* Telco is obliged to make reasonable efforts to consult with the LWU
* LWUs can utilise the objection process as a powerful mechanism to negotiate with Telcos, rather than accepting Telco's notification by default
* Objections must be on legitimate grounds
  * How the proposed Low Impact Facility and activity:
    * Does not comply with the *Determination*
    * Does not comply with the Telco Act, Code of Practice, Regulations and Industry Standards and Codes

If no objection is lodge, it implies the Landowner accepts work by default

Legitimate Grounds to Object Schedule 3 and Code of Practice for Carriers

- Do as little damage as possible
- Restore the land
- Use good engineering practice
- Protect the safety of persons and property
- Compliance with international agreements
- Protect the environment
- Agreements with utilities
- Compliance with industry standards
- Interferes ALAP with a utility, roads, and paths, traffic & use of land
- Notify landowner, road authority and utilities
- Ensure reasonable passage for roads etc
- Maintain records for overhead cable, underground facilities & towers (Sch1)
- Inspect facilities, investigate dangerous facilities & take remedial action (Sch 1)
- Best practice design to minimise degradation of the environment and visual amenity
- Minimise noise
- Reasonable steps to co-locate and cooperate with another Carrier or utility

Key water industry engagement with Telcos



Key water industry engagement with Telcos

* Water industry Telco Steering Group (established July 2017):
  * WSAA – Water Services Association of Australia
  * NSW Water Directorate
  * QLD Water Directorate

* Powers and Immunities Reference Group (established July 2018):
  * DoCA – Department of Communications and the Arts
  * ACMA – Australian Communications Media Authority
  * WSAA – Water Services Association of Australia
  * NSW & QLD Water Directorates
  * QLD Department of Transport and Main Roads & Ausroads Utilities Reserves Group
  * AMTA – Australian Mobile Telecommunications
  * CA - Communications Alliance
  * NSW Road Maritime Services
  * VIC Public Transport (Rail)

Recommendations

* Get familiar with *Determination* and Land Activity Access Notice (LAAN) and objection processes
* Object immediately to LAANs using legitimate reasons to begin negotiations with Carriers
* Ensure correspondence processes are efficient and robust eg. refer to the right person and to lodge objections to LAANs within timeframes
* Encourage Telcos to enter into agreements with adequate clauses to protect your site security, workers' safety, water supply operations, asset integrity, water quality and public health
* Seek legal advice
* Provide feedback to Steering Committee (ie. WSAA, NSW & QLD Water Directorates) and Powers and Immunities Reference Group (PIRG) members

Alternate Notification Agreement

Between nbn co limited (nbn) and [redacted] Council

2 Waiver of Notification Requirements / Alternate Notification Arrangements

2.1 Agreement to Waive Notification Requirements

By signing this Agreement:

- [redacted] Council, in accordance with clause 17(5), 18(3) and/or 19(2) (as applicable) of Schedule 3 of the Act, agrees to waive the right (under clause 17(1), 18 (1) and/or 19(1) of Schedule 3 of the Act, as applicable) to receive LAANs for the activities stated in this Notification Agreement.

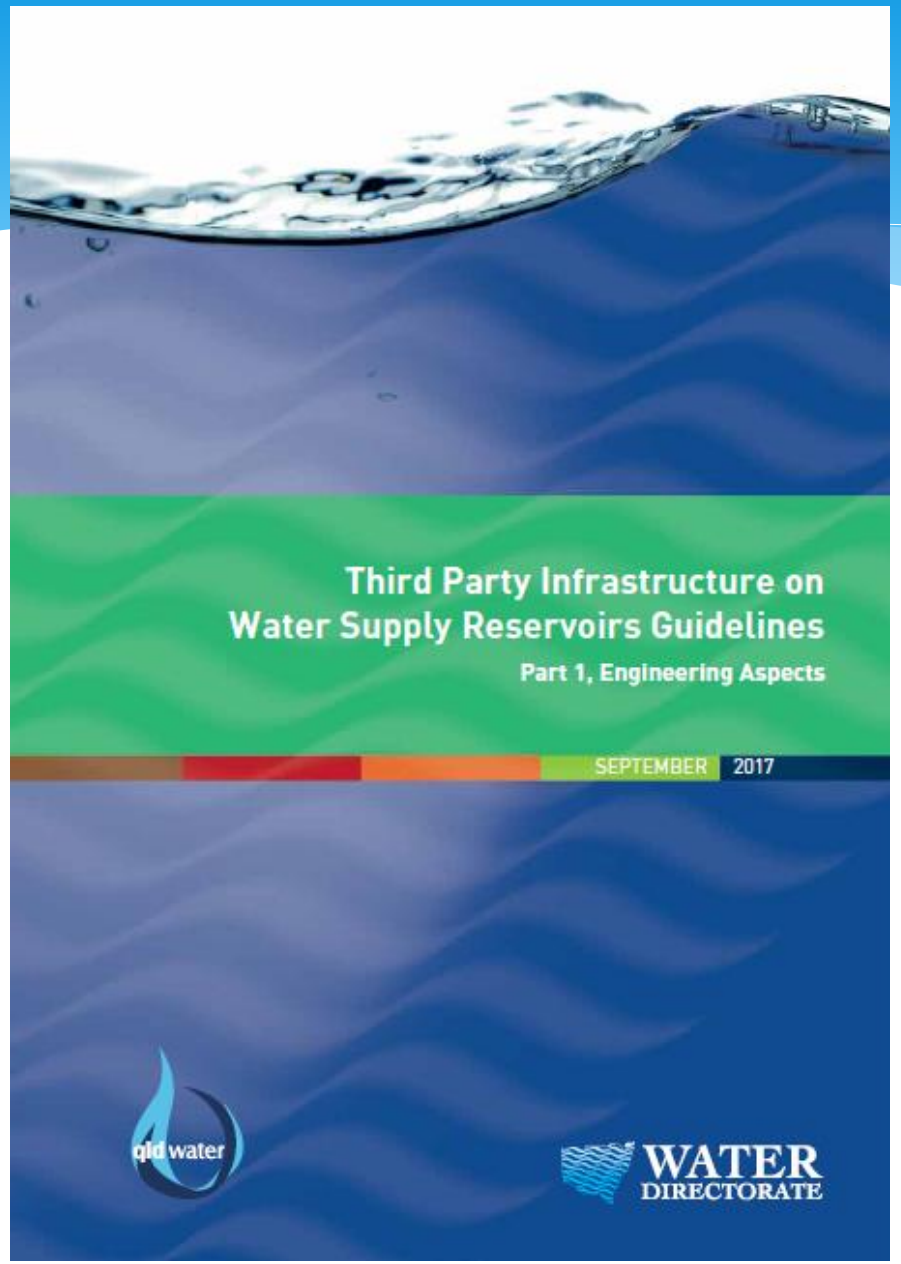
2.2 Activities APPLICABLE to the Agreement

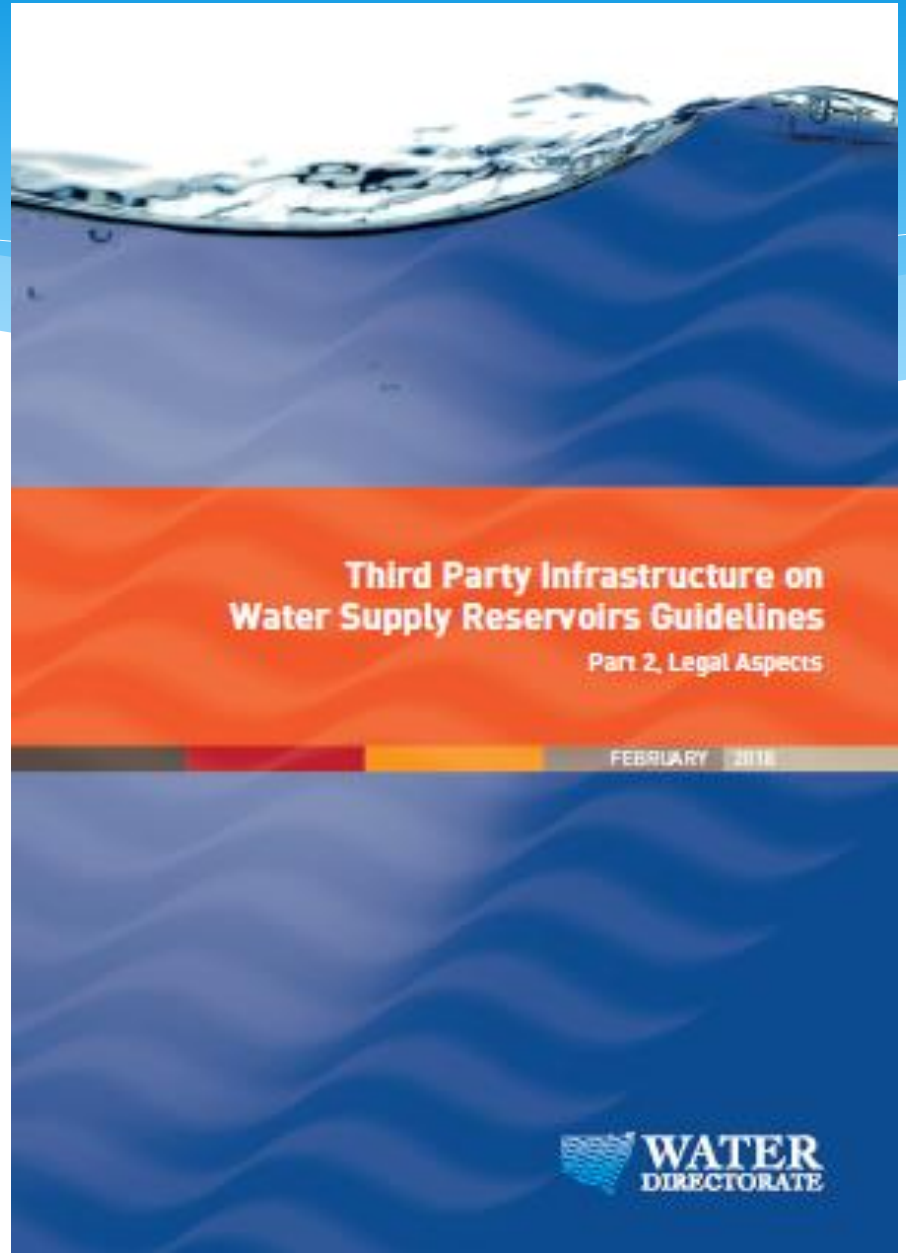
This Agreement applies to the following activities undertaken by **nbn**, or its employees, contractors, subcontractors, agents, or partners on land owned, occupied or managed by [redacted] Council:

- Technical upgrade of existing **nbn™** infrastructure and assets including above or below ground facilities within the footprint of the existing network
- Repair or replacement of existing **nbn™** infrastructure and assets including above or below ground facilities within the footprint of the existing network
- Install subscriber connections within road reserves
- General maintenance of existing **nbn™** infrastructure and assets such as graffiti removal, pest control and vegetation trimming or removal (only if impacting on **nbn™** infrastructure or operations and maintenance activities).

References:

* NSW Water Directorate - Third Party Infrastructure on Water Supply Reservoirs Guidelines, SEPTEMBER 2017 - Part 1, Engineering Aspect
* NSW Water Directorate - Third Party Infrastructure on Water Supply Reservoirs Guidelines, FEBRUARY 2018 - Part 2, Legal Aspect
* Telecommunications Act 1997 (Volume 1 and 2): https://www.legislation.gov.au/Details/C2017C00357
* Telecommunications Code of Practice 1997: https://www.legislation.gov.au/Details/F2004C01081
* Telecommunications Act 1997 (Volume 2) – Schedule 3 – Carrier's Powers and Immunities: http://www9.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ta1997214/sch3.html
* Telecommunications (Low-impact Facilities) Determination 1997: https://www.legislation.gov.au/Details/F2004C01082
* Register of Industry Codes under Part 6 of the Telecommunications Act 1997: https://www.acma.gov.au/theACMA/Library/Corporate-library/Forms-and-registers/register-of-codes
* TELECOMMUNICATIONS INDUSTRY OMBUDSMAN Guidelines on the Installation and Maintenance of Low-Impact Facilities, April 2015: https://www.tio.com.au/__data/assets/pdf_file/0008/168227/Guidelines-on-the-installation-and-maintenance-of-low-impact-facilities-APRIL-2015.pdf


Third Party Infrastructure on
Water Supply Reservoirs Guidelines
Part 1, Engineering Aspects
SEPTEMBER 2017
qld water
WATER
DIRECTORATE


Third Party Infrastructure on
Water Supply Reservoirs Guidelines
Part 2, Legal Aspects
FEBRUARY
WATER
DIRECTORATE

Thank you

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