COMMENTS FOR THE REVIEW OF THE MOBILE PHONE BASE STATION DEPLOYMENT INDUSTRY CODE C564:2011 ("the Code")

1. On 15 June 2012 the ACMA stated in a media release after registration of the current version of the Code that "the new code raises the bar on community consultation and transparency" and enhancements include "encouraging an improved collaborative approach between carriers, local councils and the community".

2. My comments apply predominantly to the provisions in clauses 4 and 6 of the Code based on my recent experience, which shows that amendments to the Code are necessary in order to improve consultation, transparency and collaboration. The balance of interests must be shifted more in favour of Councils and the community in order to achieve genuine consultations, genuine transparency and genuine collaboration. Amending the Code rather than legislation may be preferable but ultimately it may depend on how transparent Carriers are willing to be.

3. The period for preparation of comments is unfortunately short therefore the following concentrates on raising issues and suggesting some solutions.

4. The Code is a legal document and therefore members of the community who do not have legal or business training of some kind will find it very difficult to navigate its provisions as it also implies an understanding of the legislative framework, which is set out in Appendix J of the Code. Understanding the legislative framework is a feat in itself. Although clause 11.1.3 of the Code places some kind of obligation on Carriers to assist interested and affected parties in making a complaint the wording of that clause allows a Carrier much "wiggle room".

5. Many of the issues I wish to comment on are contained in my Objection dated 9 March 2017 lodged with the ACMA that relates to a proposal by Vodafone and Optus at 150 Esplanade, Brighton, Victoria. This Objection is currently under preliminary assessment by the ACMA. For simplicity I attach a short version of the particulars of this Objection without the attached correspondence and incorporate it into these comments. The main reason I have included it is to give concrete examples of how the Code is operating in order to make it simpler to understand a number of issues. It should be borne in mind that this is still under consideration by the ACMA, which could clarify a number of the issues raised.

6. Vodafone and Optus have stated, "It is not within the scope of the consultation process to discuss interpretations and shortcomings of the Industry Code." This is a clear admission that there are differing interpretations of the Code and that

there are shortcomings of the Code. These issues must be addressed in order to achieve the aims of the Code.

7. The Code has not achieved a balance between the powers of a Carrier and the interests of Councils and the community (Interested and Affected Parties) particularly where the proposed facility is located in or near to community sensitive areas such as residential areas and the proposal does not require a planning permit. The following (not in any particular order) gives more detail on issues that need to be considered.
    - A Carrier is presently only obliged to give notification of a proposal after a site has been chosen, a lease entered into and plans for the facility have been completed by the Carrier. It is suggested that an initial notification be given at an earlier time namely concurrently with a Carrier giving a notice under the Telecommunications Act 1997, Schedule 3, clause 17 (1) in relation to any activity referred to in Division 2 or Division 3 of the Act.
    - Collaboration means working together to achieve a result but from my experience there is no evidence that a Carrier will do anything other than continue down the path it has already chosen no matter how sensible a suggestion may be or how relevant a request for information is.
    - There is an obligation under clause 6.3.1 (b) of the Code to maximize the level of accurate and accessible information about the project. It would appear that Carriers regard themselves as the arbiter of what information is accurate, what information is accessible and in fact what information it is obliged to provide about the project.
    - A Carrier should not be obliged just to "endeavour" to provide accurate and accessible information it should have a positive obligation to provide such information and the Code may need to be amended to spell out more details of what must be included in the information provided.
    - Where a proposal is put forward by an installation joint venture such as the installation joint venture between Vodafone & Optus there is no obligation for a distinction to be made between their different aims and requirements. If there is an opportunity for one of those Carriers to co-locate with say Telstra the joint venture currently appears not to consider this possibility, as it would not apply to both Carriers. This needs to be addressed.
    - The distinction between a "complaint" and a "request for information" referred to in clause 11 of the Code does not reflect the obligation under clause 6.3.1 (b) referred to above and should be clarified. A Council or an Interested or Affected Party should be able to make a complaint about a failure to comply with a request for information that is relevant to the project.
    - A Carrier should have an obligation to prove that there is a need for the facility at the site selected. It is currently assumed that if a Carrier puts

forward a proposal there is a need for it at that site. Whilst this appears to be reasonable it may not be unless the Carrier has an obligation to consider all alternatives including upgrades of existing sites and co-location with another Carrier's site. There should be a positive obligation on Carriers to consider every possible alternative and give detailed reasons why an alternative is inferior.

- The current obligation on an Interested or Affected Party to deliver to a Carrier an "objection" and then if dissatisfied with an answer prepare an Objection to ACMA is extremely legalistic, cumbersome and time consuming. The ACMA says it conducts a preliminary assessment of all objections and that if satisfied there are grounds it will conduct an enquiry. Here is one problem with this process. The ACMA will not commence a preliminary assessment until after a Carriers final report. If an Objector says that during an active consultation period a Carrier is in breach of a time limit under the Code the ACMA will not investigate it until after a Carrier's final report. Too late.
- Would involvement of the Telecommunications Industry Ombudsman prior to any ACMA process make it simpler and easier for all parties?
- There is no explicit obligation for a Carrier to comply with the Precautionary Approach. It is implied in the Code but it should be specifically stated.

8. In May 2012 the Senate Environment and Communications Legislation Committee in publishing its Report on a proposed amendment to the Telecommunications Act 1997 stated that although it recommended not to make the proposed amendments:

   "Failure to improve community engagement as a result of the changes to the industry code could require further legislative amendments to ensure the community is and feels part of the process, and has access to real and effective communication and consultation processes."

   The telecommunication industry must agree to make further changes to the Code to avoid the prospect of legislative amendments that may go much further than changes to the Code.

Brian Mandie

PARTICULARS OF OBJECTIONS

DOCUMENTS ATTACHED:

1. 10 June 2016 – from me to CPS
2. 22 June 2016 – from me to CPS
3. 30 June 2016 – from me to CPS
4. 05 July 2016 – from me to CPS
5. 14 July 2016 - from CPS Global to me.
6. 03 August 2016 - from me to CPS with attached Opinion.
7. 05 August 2016 - from CPS to me with letter from Optus 1 August 2016
8. 14 September - from CPS to me.
9. 19 September - from me to CPS.
10. 21 November 2016 - from CPS to me in reply to my email to CPS dated 27 October 2016.
11. 23 November 2016 - from me to CPS with attached Voda alternative site document.
12. 29 November 2016 - from me to CPS.
13. 02 December 2016 - from me to CPS.
14. 02 December 2016 - from Telstra copied to me.
15. 3 December 2016 - from me to CPS.
16. 07 December - from CPS to me.
17. 08 December - from me to CPS.
18. 13 December - from me to CPS.
19. 15 December - from CPS to me.

NOTES:

- Where emails from CPS to me quote from a previous email of mine and I have not attached a copy of that email, I confirm (and rely on) that the quoted extracts from my emails are correct and are evidence of what it states. The documents referred to above are emails unless otherwise stated.
- Objections to breaches of Clauses 4 and 6 are spread throughout the above documents. They are either express by quoting the relevant Code clause or implied by quoting the substance of the relevant Clause.

DEFINITIONS AND ABBREVIATIONS

ACMA means the Australian Communications and Media Authority
Additional Information means the Additional Information to address feedback from Community Information Session on 26 October 2016 posted on the Carriers' RFNSA website.
ARPANSA means the Australian Radiation Protection ad Nuclear Safety Agency
Carriers means Vodafone and Optus
Code means the Mobile Phone Base Station Deployment Code C564:2011
Consultation Report means the Carriers Consultation Report dated 17 February 2016 posted on the Carriers' RFNSA website.

CPS means CPS Global in its capacity as representative of the Carriers Vodafone & Optus
EMR means EMR as defined in the Code
MCF means the Mobile Carriers Forum
MCF Requirements means the requirements set out in the document MCF Precautionary Approach to Site Selection C564:2011.
Precautionary Approach - as discussed in the Explanatory Statement of the Code and in Appendix A of the Code
RFNSA means the Radio Frequency National Site Archive

INTRODUCTORY STATEMENTS AND SUBMISSIONS

1. The Carriers failed do their utmost to provide to interested parties as many facts as possible about the project that were easily understood and true and correct in every particular. (A paraphrase of Clause 6.1.3 (b))

2. The Carriers failed to comply with their procedures for Site Selection. (Clause 4.1.4).

3. The proposal is from a joint venture of Vodafone & Optus. Although the Carriers have stated that "Vodafone is the lead Carrier for a joint Vodafone / Optus proposal" (thereby implying that it is Vodafone that has a greater need for the facility than Optus) and that "Vodafone, Optus and Telstra design and operate their wireless networks independently" (thereby implying that each of those Carriers have different needs) the Carriers refused to provide information:
    - To distinguish between the existing coverage of Vodafone and the existing coverage of Optus; and
    - To distinguish between the needs of Vodafone and Optus;
    - As to why a Site suitable for only one Carrier and not two would not be considered
    - Setting out details of specifically what was shown in 2015 computer modeling and drive tests and whether such information was still current
    - Why specified dB levels in the target area alleged to be poor were specified in the absence of an industry standard without explanation as to how those specified levels were chosen

    thereby preventing an educated analysis of the exact coverage problem and how that problem could be accommodated with some other alternative.

4. The Carriers failed in their obligation to follow the Precautionary Principle when that Principle was paramount under the Code in circumstances where the Carriers state that they are exempt from having to apply for a planning permit under State law because the facility is a Low-impact facility.

5. Pursuant to that Principle (and their own Site Selection procedures) the Carriers were obliged to:

- Exhaustively consider all alternative Sites because the proposal involves the installation of a facility on the roof of a building in a residential area, which is prohibited under State planning law;
- Seriously consider all possible non-residential sites.
- Seriously consider co-location with Telstra sites.
- Seriously consider upgrading of their existing sites.
- Seriously consider a combination of the above solutions.
- Seriously consider alternative sites put forward by residents.
- Document the whole of the Site Selection scoping process and provide accurate and accessible information to interested and affected parties.

6. The Carriers failed to provide sufficient information in an understandable form to enable interested parties to understand why the proposed Site was superior to all the alternative sites including their existing sites and the existing sites of Telstra.

7. The following examples show that the Carriers failed to consider all alternatives and generally provide sufficient and understandable information in relation to the project including Site Selection:
   - The Carriers ruled out some sites because of supposed interference of signals across the bay despite Telstra not having that problem and without explaining why the proposed site would not suffer that same alleged problem and why nearby facilities above what the Carriers refer to as the "urban clutter" would not have the same alleged interference problem.
   - Some Sites were ruled out for visual reasons when there was no information given at all as to why something visually imperfect would be superior to a site at which persons including children would be subject to radiation which site should be regarded as inferior in accordance with the Precautionary Approach.
   - A number of non-residential sites, which should have been given preference, were either not considered at all (Marine Hotel and car park) or were dismissed without sufficient and understandable information as will be shown in the attached Schedule of Alternative Sites Considered.

SUBMISSIONS ON CODE BREACHES

8. The Carriers failed to comply with their procedures contrary to Clause 4.1.4 of the Code thereby failing to exhaustively consider every possible alternative Site including new sites and opportunities for co-location either with an existing Telstra site or upgrading one or more of their existing sites.

9. The Carriers, in implementing their consultation plan failed to endeavour to maximize the level of accurate and accessible information about the project to interested and Affected Parties contrary to Clause 6.3.1 (b) of the Code.

10. With respect to the project generally and with respect to Site Selection specifically the Carriers did not implement the Precautionary Approach as in addition to the failures to comply with Clauses 4.1.4 and 6.3.1 (b) of the Code they failed to:
    - Have regard to the fact that the site was in a community sensitive area namely a residential area (Clause 4.1.5 (c) and 6.3.1 (c) of the Code)
    - Have regard to the relevant state and local government telecommunications planning policy that prohibits such a facility on the roof of a building in a residential area (Clause 4.1.5 (e) of the Code).
    - Have regard to the objective of avoiding community sensitive locations such as a residential area (Clause 4.1.5 (d) of the Code).
    - Meet the reasonable needs and expectations of the community in implementing their consultation plan (Clause 6.3.1 (d) of the Code).
    - Have regard to opportunities to co-locate (Clause 4.1.5 (m) of the Code).
    - Focus on industrial and commercial areas (Clause 3.1.3 of the MCF Requirements and therefore Clause 4.1.4 of the Code).
    - Have the size and scope of the Consultation Plan weighed against the likely impact the proposal will have on directly affected parties and community sensitive locations (Clause 6.3.2 of the Code).
    - Have an open, transparent and fit for purpose Consultation Plan (Clause 6.3.2 of the Code).

11. It is reasonable for the ACMA to direct the Carriers to comply with Clauses 4.1.4 and 6.3.1 (b) of the Code because such a direction would not preclude the Carriers from pursuing their proposal at 150 Esplanade Brighton if after complying with the provisions of the Code they have objectively shown that this site was superior to all other sites. (This submission is made without prejudice to any objection to and on the assumption that the proposed facility is low-impact and that a planning permit is not required.)

FURTHER PARTICULARS OF CODE BREACHES

The Carriers, in implementing their consultation plan failed to endeavour to maximize the level of accurate and accessible information about the project to interested and Affected Parties contrary to Clause 6.3.1 (b) of the Code.

12. In order to reach a conclusion on the balance of probabilities as to whether the Carriers complied with their obligation under Clause 6.3.1 (b) of the Code it is necessary to examine:

- What this obligation intends to achieve in the context of the objectives of the Code; and
- The context of Clause 6 of the Code in which it is found; and
- The meaning of the words in Clause 6.3.1 (b);

and then to reach a conclusion as to whether there was compliance based on a comparison of the obligation set out in Clause 6.3.1 (b) of the Code compared to what information was provided by the Carriers either by email or by publicly available information posted on the Carriers' RFNSA website.

Objectives of the Code

13. In the Introduction to the Explanatory Statement of the Code objectives included, in Clause (b) "to enhance the level of information supplied to Councils and the community with respect to mobile phone base stations" and in Clause (c) "to specify and improve standards in particular relating to consultation, accessibility and availability of information".

14. In the Background section of the Explanatory Statement of the Code reference is made to the increased responsibilities of Carriers in relation to a number of factors including a specific requirement to "document their decision making processes about the deployment of infrastructure".

15. In the "What the Code will accomplish" section of the Explanatory Statement of the Code there is reference to a number of improvements including in Clause (c) "greater transparency and visibility of the consultation process with local Councils and communities".

16. In the "How the Objectives will be achieved" section of the Explanatory Statement of the Code it is stated that "The revised Code looks to improve the means of communication and accessibility of information to local Council and the community".

17. In Clause 1.2 of the Code objectives include " (d) to ensure relevant stakeholder are informed, consulted and engaged with before Mobile phone Radiocommunications Infrastructure is constructed" and " (e) to specify standards for consultation, information availability and presentation."

18. In Clause 2 of the Code, Definitions and Abbreviations, the word Consultation is defined and "means a process whereby Carriers seek to inform other parties about a proposed project.....".

The context of Clause 6

19. In Clause 6.3 of the Code, Notification Objectives, it is stated in Clause 6.3.1 that a Carrier must (a mandatory obligation) endeavour to meet objectives including Clause 6.3.1 (b) "maximising the level of accurate and accessible information about the project to interested and Affected Parties."

20. Clause 6 sets out Consultation requirements for the installation at a new site without development application. It is submitted that exemption from the need to apply for a development application is a privilege of self-regulation which to some extent is counter-balanced by the extensive obligation of Clause 6.3.1 (b) of the Code in order to meet the objectives of the Precautionary Approach.

The meaning of the words in that Clause

21. The origin of the word "endeavour" in an online Oxford dictionary states: Late "Middle English (in the sense 'exert oneself'): from the phrase put oneself in devoir 'do one's utmost' (see devoir)". From that it may be concluded that endeavour means to do your utmost or to exert yourself.

22. The word maximising means make as large or great as possible.

23. The word accurate means correct in all details or particulars.

24. The word accessible means in this context easily understood or appreciated.

25. The word information means facts or details.

26. From the meaning of those words it is submitted that the obligation in Clause 6.3.1 (b) of the Code means that:

    The Carriers must do their utmost to provide to interested and Affected Parties as many facts as possible about the project and all facts so provided shall be true in every particular and very easily understood.

27. The distinction between a request for information and a complaint under the Code can be a distinction without a difference in the context of Clause 6.3.1 (b) of the Code.

28. In its email dated 05 August 2016 CPS referred to the distinction between information requests and complaints under the Code set out in Clause 11.1 of the Code and in that email divided its responses to issues raised in my earlier emails into Table A – requests for information and Table B – actual complaints.

29. It is submitted that information provided by the Carriers in response to a request for information may nevertheless be regarded as evidence with respect to a complaint for a breach of Clause 6.3.1 (b) if the request for information relates to a matter referred to in Clause 6, as Clause 6.3.1 (b) of the Code applies generally to all information provided pursuant to the requirements of Clause 6. To take one example, it applies to information that must be included on the Carriers' website in accordance with Clause 6.4.5 of the Code. Clause 6.4.5 (e)

requires the website to include information on "alternate options and opportunities for co-location considered." This relates to Site Selection and it is submitted that Clause 6.3.1 (b) applies to information provided in relation to Site Selection even if provided pursuant to a request for information. (Particulars with respect to the Carriers mandatory obligations in relation to Site Selection will be set out below. (It is also submitted that Clause 6.3.1 (b) applies to information provided pursuant to Clause 4).

30. The Carriers failed to provide accurate information in stating the southern boundary of the area under consideration, which was stated as being either Kinane Street or Were Street depending on which document is read. If the Carriers do not know the southern boundary of the area in which there is supposed to be poor signals this shows the cavalier attitude of the Carriers to the Consultation. This could be an important difference in relation to coverage but there is insufficient information provided by the Carriers to know one way or another.
    See the following examples -
    - Email dated 5 August 2016 from CPS to me refers to Kinane Street.
    - Email dated 21 November 2016 from CPS to me refers to Were Street.
    - The Additional Information document refers to Were Street.
    - The final Consultation Report refers to Kinane Street.

The Precautionary Principle or Approach

31. There is no specific Clause in the Code that simply states that Carriers must implement the Precautionary Approach. However in the Explanatory Statement to the Code it states, "In this Code, the Precautionary Approach is manifested in the obligations it imposes on Carriers." It is therefore necessary to firstly examine what is meant by this Approach, secondly list the relevant mandatory obligations in the Code that manifest this Approach and thirdly to submit evidence of obligations that were not complied with.

Particulars of the Approach

32. Clause 1.2 (a) of the Code states an objective of the Code is to "apply a Precautionary Approach to the deployment of Mobile phone Radiocommunications Infrastructure".

33. Particulars of the Approach are set out in Appendix A to the Code where it is stated among other things that:

> *"Terms used in the context of risk assessment are the Precautionary Principle, the Precautionary Approach, Prudent Avoidance and ALARA (As Low As Reasonably Achievable"*; and

"For the purposes of this document the Precautionary Principle could be seen as the fundamental precepts upon which a practical precautionary approach could be based".

34. In the Explanatory Statement of the Industry Code it is stated among other things that:

    "An underlying principle of this Code is that public health and safety is of paramount importance in the context of this Code, the precautionary principle therefore meant that precautions are taken to minimise exposure to radio emissions by virtue of their possible association with health problems in or to protect people even though radio emissions at low levels have not been proven to cause such problems." (my underlining).

35. The intent of the words underlined is that although a Carrier may show that the EMR emissions of a proposed mobile phone base station comply with the ARPANSA Principles that is not of itself sufficient to justify placing a facility on the roof of a building in a residential area unless all other alternatives including another new site and co-location opportunities have been exhaustively considered and documented with accurate and accessible information and the subject site objectively is the only available site. It is only then that the Carriers can submit that they have complied with the provisions of the Code.

36. The fact that under the ARPANSA Principles calculations of EMR emissions are made on the assumption that all persons are at ground level is not of itself sufficient to justify the Carriers from ignoring this in order to justify placing a facility on the roof of a building in a residential area where in nearby two storey buildings adults and children may live for lengthy periods of the day.

SITE SELECTION

37. The Carriers failed to comply with their procedures for Site Selection set out in the MCF Requirements contrary to Clause 4.1.4 of the Code including failing to:
    - Have regard to the fact that the site was in a community sensitive area namely a residential area (see also Clause 4.1.5 (c) and 6.3.1 (c) of the Code)
    - Have regard to the relevant state and local government telecommunications planning policy that prohibits such a facility on the roof of a building in a residential area (see Clause 4.1.5 (e) of the Code).
    - Have regard to the objective of avoiding community sensitive locations such as a residential area (Clause 4.1.5 (d) of the Code).
    - To have regard to opportunities to co-locate facilities (meaning either a co-location of a facility with an existing Telstra facility or the upgrading of any of the Carriers existing facilities) – (see Clause 4.1.5 (m) of the Code).

- Focus on industrial and commercial areas (see Clause 3.1.3 of the MCF Requirements).
- To clearly identify and document service objectives and RF requirements in assessing potential "candidate" sites against the impact of the factors set out in the MCF Requirements.

38. Site Selection falls within not only Clause 4.1.4 of the Code but also forms part of the Consultation Plan referred to in Clause 6.3.2 of the Code (which is part of the project) therefore the provisions of Clause 6.3.1 (b) as discussed above apply to all the information in relation to Site Selection to be provided under the provisions of Clause 4.1.4.

39. CPS in its email to me dated 14 July 2016 acknowledged that the Carriers procedures for Site Selection were those in the MCF Requirements.

40. Site Selection has been canvassed many times over the course of the consultation period and objections have been raised in email correspondence. Before detailing specific issues here is a list of emails in which complaints were made.

    (Dates refer to emails sent from me to CPS. The emails below contain specific references to Clauses of the Code referred to. In other emails attached there are references made to the content of a Clause although not specifying the number of the Clause. It is submitted that this is sufficient for the purposes of demonstrating an objection.)
    10 June 2016 - Clauses 4 & 6
    22 June 2016 - Clause 4
    05 July 2016 - Clauses 4 & 6
    27 October 2016 - Clauses 4 & 6
    23 November 2016 - Clauses 4 & 6 and Clause 3 MCF Requirements

41. The evidence set out below will show on the balance of probabilities that:

- The Carriers had chosen the site at 150 Esplanade around May 2015 when there was an obsolete Telstra facility in place thereby making the proposal a co-location rather than a new facility, which is a much simpler proposal to justify.
- The Carriers completed their scoping including Site Selection in May 2015.
- Telstra removed the obsolete facility in November 2015 resulting in the Carriers having to put forward a proposal for a new site under Clause 6 of the Code when they had already spent considerable time and effort in selecting what they thought was a simple co-location.
- In the proposal first put forward on the Carriers RFNSA website the only alternative sites that they said they had considered were two poles in the

vicinity of 150 Esplanade in respect of which it was simple to put forward arguments that they were unsuitable.

- In March 2016 (see letter dated 1 August 2016 attached to email from CPS dated 5 August 2016) Optus obtained consent to lay fibre optic cables in Victoria Street Brighton to connect to the proposed facility and the works commenced mid 2016 until stopped by the Council and residents. It is clear that the Carriers had a closed mind to any other alternative and that anything put forward as an alternative by residents would not be considered in good faith.
- As a result alternatives were either not considered or ruled as unsuitable without having been properly considered and documented. This failed to meet their obligation to provide accurate information and information that could be easily understood.
- Carrier responses did not comply with the provisions of Clause 6.3.1 (b) of the Code and Clause 4.1.4 of the Code.
- The Carriers referred more than once to interference across the bay that was making sites other than the chosen one at 150 Esplanade unsuitable. When advised that Telstra stated (see email from Telstra dated 2 December 2016) that interference was not a factor for it, (and it has a facility on the Brighton pier), the Carriers failed to provide any information as to why this was so. If there is a good reason for this the Carriers certainly didn't say why which was their obligation.
- See the attached Schedule of Alternative Sites Considered for details relating to alternative sites considered, reasons why the Carriers said they were unsuitable and comments on those reasons.
- The response by the Carriers evidences an attitude that because they think the facility is low-impact they do not have to exhaust every other possibility and is further evidence that the Carriers have had a closed mind throughout the consultation period and have only gone through the paces to give the impression of taking residents concerns seriously.
- The Carriers are in breach of their obligation under Clause 4.1.4 of the Code and have not taken seriously enough their obligation to find a site or sites other than the one at 150 Esplanade, which under State planning law is prohibited because it is on the roof of a building in a residential area.

42. A good example of the failure to provide accurate and easily understood information in relation to Site Selection is the site at the Brighton Beach Oval. The Carriers have made the following inconsistent statements in relation to this site:
    - The site has been upgraded as much as possible, interference issue not addressed (see email from CPS dated 7 December 2016)
    - Upgrading is not viable due to "licensing restraints" (see email from CPS dated 15 December 2016)

- A "parallel facility upgrade" will deal with residual coverage deficiencies for Vodafone customers toward South Road (see Additional Information document).

43. With respect to the preceding paragraph how can this site not be able to be upgraded when it can be upgraded? What are "licensing restraints"? What are the interference issues (that Telstra doesn't have)? If it is just Vodafone customers who have the coverage deficiencies along the Esplanade why not say so? Why couldn't an upgrade assist with coverage deficiencies through to Were Street or Kinane Street? (the Carriers are not sure which is the southern boundary of the coverage area – see elsewhere for details).If it is just Vodafone customers who have a coverage deficiency then there may be an alternative e.g. a Vodafone co-location with Telstra on Brighton Pier. Because it is a joint venture would that be a problem for Optus? All these issues are inter-related and without the information that the Carriers are obliged to give under the Code interested parties are unable to form an educated opinion.

44. The Carriers email to me dated 15 December 2016 with the attached Additional Information document provides the following evidence that the Carriers have breached their obligations under Clauses 4.1.4 or 6.3.1 (b) of the Code.

- The Carriers claim to have thoroughly investigated possible alternatives "in ***and close to*** the search area". The Carriers have rejected some alternatives because they are not in the search area not because they are not in or close to the search area. The Carriers do not specify what they regard as "close". It is submitted that some alternatives that would have been "close" to the search area should have been investigated, documented and conclusions communicated to interested parties with understandable information not unsupported statements.
- It is stated by the Carriers that all suggestions of alternative sites were considered despite there being no information provided about the consideration of the site in the search area being the Marine Hotel and car park on the corner of Park and New Streets.
- It is stated that there are no industrial or commercial areas in the search area. Once again there is no reference to these areas not being in ***or close to*** the search area. Sites such as Milanos at 4 Esplanade and buildings north from there to 40 Esplanade (which is less than 200 metres from Were Street) are close to the search area but have not been investigated despite many of the buildings being commercial.

Brian Mandie

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SCHEDULE OF ALTERNATIVE SITES CONSIDERED

DATE	ADDRESS OF SITE	REASONS THAT NOT SUITABLE	COMMENTS
14 September 2016 email from CPS in reply to email to CPS 23 August 2016		CPS confirmed that "the initial scoping exercise and candidate selection was not finalised until May 2015 and that no further scoping exercises were undertaken as the subject site was considered as the most desirable candidate regardless of the presence of an existing facility at the site."	On the website the Carriers had stated that the subject site stood out as an obvious candidate due to it being "an existing telecommunications site of which the code of practice favours". This was untrue because Telstra had removed its facility therefore it was not an existing site. In the initial scoping the Carriers chose only Options B & C. There is no evidence that any other sites were considered until residents complained during the consultation period.
June 2015 – Site Selection & Alternate Sites considered document	Option B – concrete utility pole Option C – timber utility pole	Foreshore location & lack of visual amenity. Same reasons as above.	Of all the alternate sites in and close to the search area including opportunities for co-location these two utility poles were the only ones considered in the scoping process, which ended in May 2015. There is no reference to interference across the bay as a factor for Options A B & C which is raised as an issue in the 14 July 2016 email and in later documents from CPS.
14 July 2016 Email from CPS	New Street roundabout near Dendy Street	Not conducive to reaching required coverage performance levels throughout the target area. Near school.	The non-conducive argument is a bare statement with no reasons given which is contrary to Clause 6.3.1 (b) however the nearness to a school argument is valid.

14 July 2016 Email from CPS	Site of proposed Brighton lifesaving club upgrade	Does not meet the RF objective so was subsequently discounted early in the process and therefore not shortlisted as a potential candidate for the proposal.	This site was not listed in the June 2015 Site Selection and Alternate Sites considered document therefore the Carriers contention that it was considered and rejected is open to dispute. It is not clear whether the site, if in fact considered, was the old club building or the to be upgraded building recently approved by the Council. In all respects insufficient information given contrary to Clause 6.3.1 (b).
03 August 2016 email to CPS with "Opinion"	Marine Hotel and car park cnr Park & New Sts	This site was suggested but as far as I am aware has not been considered as there is nothing in any email to me nor on the Carriers website.	This site is within the search area. The Carriers failed to comply with Clause 4.1.4
19 September 2016 email to CPS	Marine Hotel and car park cnr Park & New Sts & other alternatives	As far as I am aware Marine Hotel and car park not considered. Other alternatives dealt with later by the Carriers.	Complaint for Clause 4.1.4 implied in the wording of my email.
21 November 2016 email from CPS	No alternative sites suitable	Vodafone, Optus & Telstra design & operate their networks independently. No viable alternatives or opportunities for upgrading exist to cover the target area. The Carriers took all reasonable steps to comply with Clause 4.1.3. The website complied with Clause 6.4.5 (e) and the Carriers are compliant with Clause 4.13 of the TCP.	No information given as to why co-location is not possible just because the Carriers have different designs & operations when Vodafone & Optus do joint ventures. General statements such as no viable alternatives exist or the Carriers are compliant without giving maximum & accessible information in support of those general statements is a breach of Clause 6.3.1. (b)

23 November 2016 email to CPS with Voda Possible Alternative Sites document	Non- residential candidates in the Voda document: X = Existing pole at high point on Esplanade Y = Green Point car park Z = Commercial Building – Optus centre etc.	Rejected for reasons shown below.	See comments below.
29 November 2016 email to CPS. Reply from CPS dated 7 December 2016 Email to CPS dated 8 December 2016 and reply dated 15 December 2016 with Additional Information document.	Upgrade of existing facility at Brighton Beach Oval	Upgraded as much as possible. Interference issues. Upgrading not viable due to "licensing constraints". "Parallel facility upgrade" will deal with residual coverage deficiencies for Vodafone customers toward South Road.	See comments in paragraph 42 of the Particulars of Objections.
2 December 2016 email to CPS. Reply from CPS dated 7 December 2016	Co-location with Telstra on Brighton Pier	Not a viable option as the structure does not have sufficient space and the structural capacity to add the required equipment to host two additional Carriers.	See email to CPS dated 8 December 2016 for a detailed response to the email from CPS dated 7 December 2016 The CPS response implies co-location for one Carrier would be possible but this option is not investigated.

3 December 2016 email to CPS. Reply from CPS dated 7 December 2016	Existing facility on roof of Brighton Yacht Club	Upgraded as much as possible.	See email to CPS dated 8 December 2016 for a detailed response to the email from CPS dated 7 December 2016.
13 December 2016 email to CPS and email in reply dated 15 December 2016	Site 303665 – Power Pole Site 136127 – Milanos Hotel at 4 Esplanade	Outside the search area therefore not considered.	This is an example of the Carriers choosing a search area and then claiming that anything outside it does not have to be considered. No information is given just this statement.
Alternative Sites Considered Updated in Additional Informaton document uploaded to website on 15 December 2016	Existing facility on roof of Brighton Yacht Club	At full capacity & outside search ring and target coverage area. If the required height could be obtained for it to service the area, it would not adequately mitigate interference issues.	An admission that if the facility were higher it would service the area. No evidence as to why interference affects only Vodafone & Optus and not Telstra.
Alternative Sites Considered Updated in Additional Informaton document uploaded to website on 15 December 2016	Rooftop facility on the Lifesaving Club	Would need antennas to be 10 metres higher than the roof. Environmental objections.	It is unclear as to whether the roof of the existing building or the roof of the newly approved upgraded building is being referred to. Environmental issues are given priority to the radiation of residents.

Alternative Sites Considered Updated in Additional Informaton document uploaded to website on 15 December 2016	Green Point Car Park	Same reasons given as to Brighton Yacht Club above	An admission that if the facility were higher it would service the area. No evidence as to why interference affects only Vodafone & Optus and not Telstra.
Alternative Sites Considered Updated in Additional Informaton document uploaded to website on 15 December 2016	Various poles along the Esplanade within the search area	Rejected for the same reasons as to Candidates B & C. i.e. Foreshore location & lack of visual amenity.	Preference given to environmental & visual issues than radiation of residents.