

Experts in Body Corporate Law and Dispute Resolution

Land Access and Activity Notice (LAAN) – Your Rights

Since we first raised this issue last year, we continue to see an increase in telecommunication providers seeking to access a body corporate scheme via a land access and activity notice (or LAAN) to:

- inspect a scheme to assess the viability of installing certain telecommunication facilities (usually for internet networks); and / or
- carry out works to install certain types of telecommunication facilities.

(Telco Rights)

In a growing trend the telecommunication providers are using LAANs to access body corporate land to undertake work that may go beyond the Telco Rights – for example installing infrastructure that is not actually a low-impact facility.

It is important for body corporate committees, and body corporate managers, to understand that in certain circumstances the body corporate has a legal right to oppose the Telco Rights.

In this article we discuss Telco Rights and the body corporate rights to object to a LAAN in more detail.

Telco Rights

The Telecommunications Act 1997 (Cth) and the Telecommunications Code of Practice gives Telco Rights to telecommunication providers. Ordinarily Telco Rights do not need the consent of owners, occupiers or the body corporate.

However, the Telco Rights only exist if:

- proper notice has been given to the body corporate through a LAAN; and
- if the LAAN relates to an installation, it only relates to installing “low-impact facilities”.

LAAN requirements

The telecommunications provider issuing the LAAN must:

- specify the purpose of any inspection or work to be conducted;
- contain certain statements outlining compensation and the body corporate’s right to object; and
- give at least 10 business days’ notice for any work to be conducted (or 2 business days’ notice for any inspection).



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Low-impact facilities

For a LAAN relating to an installation, it is important that any proposed installation falls within the determination of a low-impact facility. Otherwise, the telecommunications provider does not have any Telco Rights.

What amounts to a low-impact facility is determined by the Minister in the Telecommunications (Low-impact Facilities) Determination 2018. Examples include temporary towers below a certain height.

Right to object

Whilst a body corporate has a legal right to oppose the Telco Rights, any objection to a LAAN:

- can only be made on the basis of certain categories of reasons; and
- must be done within strict timeframes of receiving the LAAN.

After making an objection the telecommunications provider then has a period to make a reasonable effort to resolve the objection by agreement.

If agreement is reached, the telecommunications provider must then comply with that agreement.

Failing agreement, the telecommunications provider must advise the body corporate whether they propose to change the activity or, if not, why they will continue unchanged.

If the body corporate still objects, the telecommunications provider can raise the objection with the Telecommunications Industry Ombudsman who will assess the merits of the LAAN, any objection and come to a conclusion about the proposed installation.

Compensation

The Body Corporate is entitled to compensation in relation to financial loss or damage. This has been given a broad interpretation by the Courts.

What should a committee do?

If a committee receives a LAAN it is important that it acts swiftly – in certain circumstances this can be as little as 2 business days after receiving a LAAN. If swift action is not taken, the body corporate may lose its right to object (and / or compensation), even if such an objection would be valid.

Mahoneys regularly advises bodies corporate on LAANs, including their right to object and negotiate commercial outcomes with telecommunication providers.

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