

Report No. 13.17 PLANNING - Development Application No. 10.2018.86.1 - Installation of 30m high telecommunications facility and associated ancillary equipment at Lot 339 DP 755692 Old Pacific Highway Brunswick Heads

Directorate: Sustainable Environment and Economy
Report Author: Greg Smith, Team Leader Planning Services
File No: I2018/1301
Theme: Sustainable Environment and Economy
 Development and Certification

Proposal:

Proposal description: Installation of 30m High Telecommunications Facility and Associated Ancillary Equipment

Property description: LOT: 339 DP: 755692
 Old Pacific Highway BRUNSWICK HEADS

Parcel No/s: 164530

Applicant: Aurecon

Owner: Brunswick Heads Bowling Club

Zoning: RE2 Private Recreation

Date received: 27 February 2018

Integrated Development: No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 22 March 2018 to 4 April 2018
- Submissions received: 1

Delegation to determination: Council

Issues:

- Building height under LEP 2014 clause 4.3, with clause 4.6 request for variation (development standard is 9m, total height is approximately 31.5m)
- Bush fire prone land
- Acid sulfate soils - class 4
- Public submission (1)

Summary:

The DA proposes installation of a 30m high telecommunications facility and associated ancillary equipment. The location is part of the site of the Brunswick Heads Bowling Club.

The proposed development is generally consistent with the relevant environmental planning instruments and planning controls applicable to the site including the LEP and DCP provisions for this type of development, excluding the height provisions under Clause 4.3 of BLEP 2014. The tower has a proposed maximum height of approximately 31.5m which exceeds the 9m maximum development standard.

The DA is supported by a written request for a variation pursuant to clause 4.6 of LEP 2014. It is considered that strict compliance with the development standard is not warranted in this instance. In particular a phone tower would be ineffective at 9 metres in height. It is noted the tower is located at the southern entrance to Brunswick Heads adjacent to the Bowls Club and next to an existing shed. The area is in part vegetated with a mixture of eucalypts and other coastal species helping to screen the tower as it is approached from Brunswick Heads to the north and from the Pacific Highway to the south. Further landscaping is also recommended by way of a condition of

consent to soften the visual impact of the tower compound. The proposal is unlikely to have a significant impact on the visual amenity of the locality.

- 5 It is considered the proposal raises no significant issues in terms of environmental impacts which cannot be managed through reasonable and relevant conditions of approval, and the site is considered suitable for the development as discussed in this report. In this regard numerous sites were considered in the Brunswick Heads area, with the bowling club site selected as the preferred property for the phone tower.
- 10 The proposed tower will provide improved mobile telecommunication for residents, businesses, tourists and other visitors to the area. The application is recommended for approval subject to conditions of consent.

NOTE TO COUNCILLORS:

- 15 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have
- 20 been called by the mover and seconder of all motions relating to this report.

RECOMMENDATION:

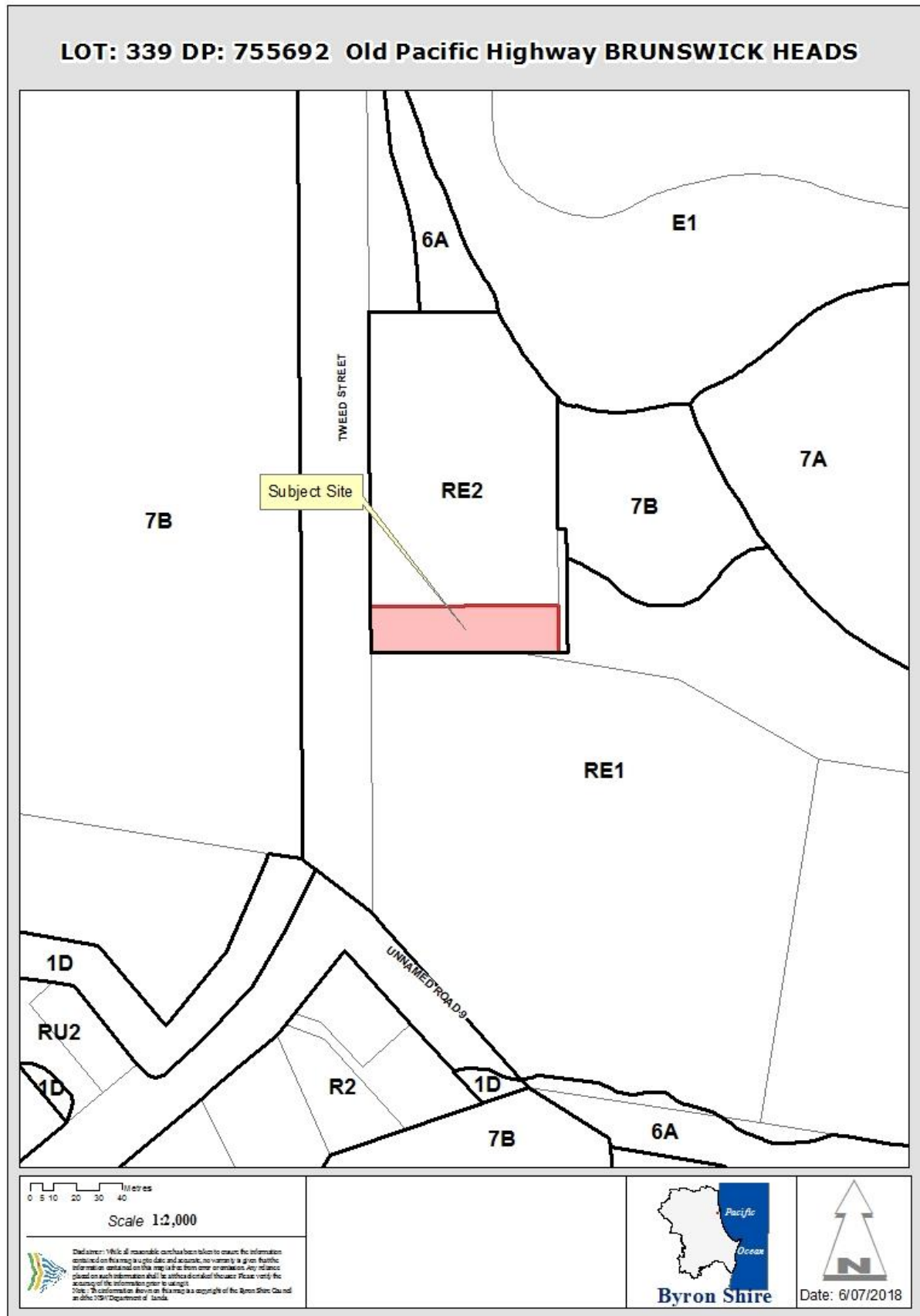
Pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2018.86.1 for Installation of 30m high telecommunications facility and associated ancillary equipment, be approved subject to conditions listed in Attachment 2 #E2018/57739.

Attachments:

- 25
- 1 Attachment 1 Proposed Plans, E2018/57738
 - 2 Attachment 2 Recommended conditions of consent, E2018/58444
 - 3 Attachment 3 Submission received, E2018/58445

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Report



Assessment:

1. INTRODUCTION

1.1. History/Background

The Brunswick Heads Bowling Club is located at the site, which has been the subject of various development applications over the years.

1.2. Description of the proposed development

This application seeks approval for Installation of 30m High Telecommunications Facility and Associated Ancillary Equipment.

1.3. Description of the site

Land is legally described as LOT: 339 DP: 755692
 Property address is Old Pacific Highway BRUNSWICK HEADS
 Land is zoned: RE2 Private Recreation
 Property is constrained by: Bush fire prone land, Acid Sulfate Soils Class 4



The above arrows show the approximate location of the proposed development (looking north and looking south, respectively).

2. SUMMARY OF REFERRALS

| Referral | Issue |
|--------------------------------|---------------------------------------------------------------------------------|
| Environmental Health Officer | No objections subject to conditions. Refer to Doc #A2018/7372. |
| Development Engineer | No objections subject to conditions. Refer to Doc #A2018/7388. |
| S64 / Systems Planning Officer | No objections, no conditions. Refer to Doc #A2018/7409. |
| S94 / Contributions Officer | Conditions recommended in relation to the payment of section 94A contributions. |

* Conditions provided in the above referral are included in the Recommendation of this Report below

3. SECTION 79BA – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, which the development complies with the document Planning for Bush Fire Protection 2006. The site is bush fire prone land.

The Applicant advises that: "The proposed facility would be unmanned and all equipment constructed of either steel or aluminium materials. Therefore, a bush fire would not present a

significant danger to the facility. Telecommunications infrastructure is generally deemed as important infrastructure, during emergency events, such as a bushfire.”

Planning for Bush Fire Protection 2006 states that class 10b buildings in bush fire prone areas should be non-combustible and on the basis of the Applicant's advice, the proposal complies with this requirement. It is also noted that the direction of the bush fire hazard is to the west, on the opposite side of the Old Pacific Highway, providing a defensible space between the proposal and the hazard.

4. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard to the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

4.1 State Environmental Planning Instruments

| | Satisfactory | Unsatisfactory |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|--------------------------|
| State Environmental Planning Policy No 55—Remediation of Land | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: Council's Environmental Health Officer advises as follows: "Due to the non-habitable nature of the proposed development, soil contamination assessment is not considered necessary in this instance. Note that this is consistent with Council's approach to other similar developments". | | |
| State Environmental Planning Policy No 71—Coastal Protection | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: The proposal will not have a significant impact with respect to the matters for consideration under the former SEPP 71. | | |
| State Environmental Planning Policy (Infrastructure) 2007 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: The proposed telecommunications facility is permitted with consent pursuant to clause 115 of the Infrastructure SEPP. | | |
| State Environmental Planning Policy (Coastal Management) 2018 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consideration: The proposed development is considered to be satisfactory having regard to the provisions of the Coastal Management SEPP, noting that the site is within the Coastal Use Area only. | | |

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP&A Act because it applies to the subject land and the proposed development.

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- (a) The proposed development is defined in the Infrastructure SEPP as a telecommunications facility;
- (b) The land is within the RE2 Private Recreation according to the Land Zoning Map;
- (c) The proposed development is permitted with consent under the Infrastructure SEPP; and
- (d) Regard is had for the Zone Objectives as follows:

| Zone Objective | Consideration |
|----------------------------------------------|----------------------------------------------|
| • To enable land to be used for private open | The proposal does not prevent the use of the |

| | |
|-----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| <i>space or recreational purposes.</i> | land for private open space or recreational purposes. |
| • <i>To provide a range of recreational settings and activities and compatible land uses.</i> | The proposal does not prevent the provision of a range of recreational settings and activities and compatible land uses. |
| • <i>To protect and enhance the natural environment for recreational purposes.</i> | The proposal appropriately protects and enhances the natural environment for recreational purposes. |

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP&A Act. The proposed development complies with all of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to clause 4.3 which is addressed as follows:

4.3 Height of buildings

Clause 4.3 is as follows:

(1) *The objectives of this clause are as follows:*

(a) *to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,*

(b) *to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,*

(c) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Buildings Map shows a 9m maximum height of building for the location of the proposed development. The proposed height is approximately 31.5m.

The Applicant has submitted a written request for variation under clause 4.6 of LEP 2014. The clause 4.6 variation request is considered with reference to relevant matters as follows:

1. **Introduction – Summary of proposed development**

The development application proposes installation of a 30m high telecommunications facility and associated ancillary equipment, although the total height is closer to 31.5m.

2. **Clause 4.6 Exceptions to Development Standards**

LEP 2014 clause 4.6 allows the granting of a development consent, even though the development would contravene a development standard. However Council must first consider a written request from the Applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Council must be satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be

carried out (noting that the concurrence of the Secretary is not required to be obtained in this instance).

3. The Development Standard to be varied

The development standard to be varied is the maximum height of building planning control of 9m applicable to this site under LEP 2014 clause 4.3 as described above.

The maximum height of building planning control is a development standard in accordance with the applicable definition in section 1.4 of the Environmental Planning and Assessment Act 1979 because it is a provision of an environmental planning instrument in relation to the carrying out of development, being a provision by or under which requirements are specified or standards are fixed in respect of any aspect of that development, being the height of a building.

4. Extent of Variation to the Development Standard

The extent of the variation is approximately 250%.

5. Objective of the Development Standard

The objectives of the development standard, as outlined in subclause 4.3(1) are:

- (a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,
- (b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,
- (c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

6. Objectives of the Zone

The objectives of the RE2 Private Recreation Zone are stated and have been addressed in this section above.

7. Assessment – the specific questions to be addressed:

(a) Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The clause 4.6 written request submitted in support of the DA advises as follows in this regard:

“Telstra believes that compliance with the development standard is unreasonable given the nature of telecommunications facilities”.

Requiring compliance with the development standard would result in a telecommunications facility of such a size that would not allow appropriate servicing of the local area in accordance with its intended purpose. Requiring compliance with the development standard would be unreasonable in the circumstances of the case.

(b) Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

The clause 4.6 written request submitted in support of the DA advises as follows in this regard:

“The height of the facility is necessary as the nature of telecommunications facilities is that they are high enough to protrude above surrounding vegetation

and structures. This is how the network operates, by establishing a 'line of sight' for antennas. There is surrounding mature vegetation that exceeds 9m and as such, the tower is unable to comply with the maximum height limit prescribed in Council's LEP. The proposed height of the facility allows coverage to the Brunswick Heads area, without the facility needing to be in the middle of a residential locality.

The height is required to allow adequate provision of mobile voice and data service to the residential area south of the proposed facility and the main residential, commercial and tourist areas of Brunswick Heads to the north. Furthermore, if the 9m height restriction was enforced in all localities as identified in Council's LEP, it is unlikely there would be sufficient telecommunications coverage. Typically, telecommunications base stations exceed these height limits".

The environmental planning grounds are particular to the site and sufficient to justify contravening the development standard. These include that the building is located so as to maintain an appropriate distance to nearby residential properties, minimise environmental and visual impacts, and use of existing space with minimal environmental constraints. The proposal will be visually softened to some extent by existing trees and vegetation, particularly from the southern approach. The photo below is taken from the road, residential properties are located even further to the south and it is unlikely that the proposed structure will be excessively visible from the nearest residential properties (particularly due to intervening vegetation). Refer for example the photo below which was included in the Applicant's Statement of Environmental Effects. The proposed variation does not create any significantly adverse social, environmental or economic impacts in the locality.



(c) Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest? Is it consistent with the objectives of the standard and the zone as set out above?

The clause 4.6 written request submitted in support of the DA advises as follows in this regard:

"With respect to Clause 4.6(4)(a)(ii), Telstra believes that the proposal is consistent with the zone objectives of RE2 Private Recreation. The facility will provide a reliable mobile network service that is essential for residential, commercial and recreational purposes; meeting the day to day mobile needs of residents, businesses and visitors to the area".

The proposal is consistent with the objectives of the development standard and the zone for site specific reasons as follows:

(a) Objectives of the Standard

- whilst the proposal exceeds the specified maximum height, the proposed height is justified in the location and having regard to the minimal environmental impact of the proposal,
- the proposed height does not significantly detract from the streetscape and character of the area, and
- the proposal will not have a significant impact in terms of visual, views, loss of privacy and loss of solar access.

(b) Objectives of the RE2 Zone

- The proposal does not prevent the use of the land for private open space or recreational purposes.
- The proposal does not prevent the provision of a range of recreational settings and activities and compatible land uses.
- The proposal appropriately protects and enhances the natural environment for recreational purposes.

The proposal produces a better planning outcome than one that strictly complies with the development standard because requiring strict compliance would result in a mobile phone tower that is not able to serve the intended purpose. The proposed development is in the broader public interest. The circumstances of the case warrant a more flexible approach to application of the building height development standard, the Applicant's variation request is supported and the development application is recommended for approval despite the non-compliance.

6.1 Acid sulfate soils

The location of the proposed development is class 4 acid sulfate soils, which relates to works exceeding a depth of 2m below the natural ground surface. However the Applicant confirms that there will be no works beyond 2m below the natural ground surface. The Applicant acknowledges that should acid sulfate soils be discovered during excavation, then works would cease in order to resolve the potential for impacts.

6.2 Earthworks

The development involves earthworks for which development consent is required. The extent of proposed earthworks is minimal at this relatively flat topographical location.

6.6 Essential services

The proposed development has access to all necessary services, including for example stormwater and power.

4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

There are no draft environmental planning instruments of significant influence in relation to the proposal.

4.4A Byron Shire Development Control Plan 2014 (DCP 2014)

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP& A Act because it applies to the land to which LEP 2014 applies.

Chapter B2 Preservation of trees and other vegetation

The proposed development is located in a grassed position and does not require the removal of any significant trees.

Chapter B3 Services

The location of the proposed development has access to all necessary services, including for example stormwater, access and power.

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

The proposed access is satisfactory having regard to the assessment provided by Council's Development Engineer.

Chapter B8 Waste Minimisation and Management

A pre-construction certificate condition is recommended requiring appropriate waste minimisation and management procedures to be put in place for all works.

Chapter B9 Landscaping

A landscape plan is required by way of a recommended condition so as to visually soften the compound of the tower.

Chapter B14 Excavation and Fill

The plans provide an indication that the extent of excavation and fill does not exceed a depth of 1m.

Chapter C3 Visually Prominent Sites, Visually Prominent Development and View Sharing

The DA is supported by a visual impact analysis. The nature of telecommunications base stations is that they need to be tall enough to protrude above surrounding infrastructure and vegetation, in order to provide a line of sight to devices and other base stations. It is impractical to completely screen a new structure.

To the west of the proposed site, on the other side of Old Pacific Highway, is densely vegetated unused land. Directly to the north is the Brunswick Bowling Club and beyond the clubhouse to the north is dense tall vegetation. Considering the tall and dense nature of these trees, the proposed facility would not be visible to persons traversing Old Pacific Highway (by either vehicle or pedestrian form) from the north, towards the south, until approximately 180m from the site. Existing vegetation provides visual softening from the northerly direction.

To the south east of the site are sporting ovals and Council's water treatment plant. The closest residential property is approximately 150m to the south, separated by reasonably tall vegetation, another sports oval and a skate park. It is predicted the main view corridor of the proposed facility, would be for pedestrians and vehicular traffic travelling north along the Old Pacific Highway, Due to the shape of the road corridor, it would be expected a view of the facility would be obtained from approximately 160m from the site.

There are surrounding tall trees that would provide intermittent screening of the facility and the immediate surrounding vegetation would screen the lower half of the pole. Whilst it is appreciated there will be an intermittent visual presence of the facility, particularly when facing northwards and from the Bowling Club and sporting ovals, this location offers the greatest amount of natural screening and separation from residential properties, compared to other locations identified within the Brunswick Heads area. Conditions of consent are recommended in relation to general landscaping around the compound.

Chapter E4 Brunswick Heads

The DCP shows an existing footpath / cycleway crossing the site, however there is no existing footpath / cycleway in the exact location of the proposed development.

4.5 Any Planning Agreement or Draft Planning Agreement?

| | Yes | No |
|-------------------------------------------------------------------------|--------------------------|-------------------------------------|
| Is there any applicable planning agreement or draft planning agreement? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

The proposal raises no issues relevant clauses for consideration under the EPA Regulations 2000.

4.7 Any coastal zone management plan?

| | Satisfactory | Unsatisfactory | Not applicable |
|-------------------------------------------------------|--------------------------|--------------------------|-------------------------------------|
| Is there any applicable coastal zone management plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

4.8 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

| Impact on: | Likely significant impact/s? |
|----------------------------|-----------------------------------------------------------------------------------------------------------|
| Natural environment | No. The proposal will not have a significantly adverse impact on the natural environment of the locality. |
| Built environment | No. The proposal will not have a significantly adverse impact on the built environment of the locality. |
| Social Environment | No. The proposal will not have a significant social impact on the locality. |
| Economic impact | No. The proposal will not have a significant economic impact on the locality. |

Standard conditions of consent are recommended in relation to construction activity, hours of work, builders waste and the like

4.9 The suitability of the site for the development

The Applicant advises that Telstra and its consultants have been investigating an appropriate location for a new Telstra base station facility for over seven years in the Brunswick Heads area. Brunswick Heads requires a dedicated mobile phone base station to effectively provide reception to residents, businesses and visitors to the area.

The Applicant advises that it has been difficult to find a suitable location, due to the residential and scenic nature of the area, but that Telstra is of the opinion the Brunswick Heads Bowling Club offers the most appropriate location for a new facility. Twelve candidate sites were investigated by Telstra.



The reasons provided by the Applicant as to why other candidates were not selected are as follows:

- An agreement with the landowner could not be reached or property negotiations failed.
- The proposal would have resulted in a high degree of visual impact on the surrounding residential area.
- Proximity to residential properties or less separation from residential properties.
- An Aboriginal Land Claim (ALC) was lodged, prohibiting development from occurring.

Upon assessment of all candidates, Telstra selected the proposed location as ultimately deemed the most appropriate location as the site offers reasonable distance from the closest residential properties, existing surrounding tall vegetation, a willing landowner and the location would meet radio frequency objectives.

It is considered the site is suitable for the proposed telecommunication tower.

4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited. There was one submission made on the development application which raised the following issues:

9m height limit. Maintenance of Brunswick Heads lifestyle and the prevention of Gold Coast type developments. Views form the breakwater of tree and sky with hills behind and no building in sight. Every other Telco will want one as their coverage is no better than Telstra and generally worse. A mobile phone tower is ugly. A developer could put forward a sound argument that an architecturally designed 30m block of units would be more attractive. Council must consult widely with the Community. I only, by chance, picked up the Byron News as it is not delivered to us.

Comment: The height of the proposed development has been considered above with reference to the provisions of clauses 4.3 and 4.6 of Byron LEP 2014 and is considered to be justified. The Applicant has selected a location that does not adjoin dwellings and is not topographically elevated

or highly visually prominent. The proposed height is not likely to be a trigger for applications proposing blocks of units that exceed the height limit. Any subsequent application for a telecommunications facility would be considered on its merits. The application was notified in a local newspaper in accordance with Council policy.

The application indicates a pressing need for the tower based on current call failure rates and future demand. Even though we live on the edge of the coverage there has never been a time when a call has failed or dropped out. Delays in receiving messages during the Splendour or Falls Festivals. These are massive extra numbers of mobile phone users that should be mandatorily catered for by mobile towers at the site. There is no Telstra coverage near the Gulgan Rd / Mullumbimby Rd junctions. Any tower should be on the Mullumbimby side of the Motorway.

Extra numbers of people and higher data won't happen as Brunswick is full at Xmas and Easter and there is no way of being overfull. With the NBN, many people who currently use mobiles may switch to VOIP with their internet thus reducing the demand on mobile services.

Comment: The Applicant provides the following justification relating to the need for the proposed development:

"Telstra regularly undertakes detailed assessments of the performance and coverage of its digital mobile telephone and broadband internet networks to ensure its systems are reliable and achieving the required objectives. The customers demand for mobile broadband, voice and video services is driving existing facilities towards full capacity.

Since the introduction of smartphone's and tablet devices, together with wireless internet and social networking applications, Telstra is experiencing a doubling every year of wireless demand. Reference to customer demand in the Brunswick Heads area has identified diminishing radio frequency coverage in the area for over seven years. This will further deteriorate in the future. In order to improve coverage in the area, a dedicated site to cover the Brunswick Heads area is essential; and Telstra has identified the proposed location at Brunswick Heads Bowling Club as the preferred location for a new mobile phone base station.

Telstra considers that the location selected for the new base station best meets the radio frequency objectives, including:

- the ability to reduce the work load (referred to as 'traffic') currently being experienced by the surrounding network sites, specifically the existing site known as Billinudgei, and*
- offering the opportunity to provide enhanced coverage by locating the new base station as centrally as possible, whilst avoiding residential properties as much as possible, within the area of customer demand".*

The Applicant is considered to have provided sufficient justification for the purposes of DA assessment, for the proposed development with reference to demand.

No one wanted their tower, having investigated and had rejected a number of alternatives. The entry statement to Brunswick Heads from the most popular South will be the top of the mobile phone tower – not a good look. The applicant has provided some depictions of the tower from two positions on Old Pacific Highway, but where else can it be seen from? As the applicant requires the 30m for line of sight to the relevant mobile phones, so also will there be line of sight back to the tower. Will it be visible from the pedestrian bridge over Simpsons Creek or the Breakwater perhaps?

Comment: The Applicant investigated a number of alternative locations and settled on the proposed location, which is considered satisfactory having regard to visual impact for the reasons given above.

5 *The applicant states “there is no substantial evidence that exposure to low level radiofrequency EME causes adverse health effects”. This is not the same as saying there cannot be any effects and in any case of uncertainty “precautionary principles” should apply. These demand that any siting of a mobile phone tower should be at a site that minimises exposure. The Industry Code also has the objective of “avoiding community sensitive*
 10 *locations”. The skate park and playing fields are community sensitive locations. One site near the Brunswick Heads Primary School was rejected on being too close to the school, but they want to put a tower close to where hundreds of children play regularly on the skate park or at sports on the adjoining ovals. The playing fields are also used by the Rescue Helicopter. They also should be advised of this proposal given the height of the tower.*

15 Comment: Council’s Environmental Health Officer advises that telecommunication facilities which radiate electromagnetic energy (EME) into the surrounding environment must comply with safety limits imposed by the Australian Communications and Media Authority (ACMA).

20 The limits are given in the *Radiocommunications (Electromagnetic Radiation — Human Exposure) Standard 2003*. These limits are based on the ARPANSA *Radiation Protection Standard - Maximum Exposure Levels to Radiofrequency Fields - 3kHz to 300GHz*. ACMA also requires compliance with industry codes of practice including the Australian Communications Industry Forum (ACIF) *C564:2004 Industry Code – Deployment of Mobile Phone Network Infrastructure*.

25 Appendix B of the Statement of Environmental Effects provides a summary of estimated RF EME Levels around the proposed mobile base station in accordance with Australian Radiation Protection And Nuclear Safety Agency (ARPANSA) Prediction Methodology and presents a report in an approved ARPANSA Environmental EME Report format. The maximum predicted EME
 30 levels for the proposed systems at this site is 4.36V/m; equivalent to 48.21 mW/m² or 0.86% of the ARPANSA public exposure limits (at 179.22 m from the antenna). Note: The public exposure limit is 100%, so 0.86% is well within safety limits.

35 The Telecommunications Code of Practice requires that telecommunications providers *co-locate facilities with the existing facilities of other carriers or public utilities, or utilise public easements*. Co-location can assist in minimising visibility, reducing visual impacts and protecting public amenity. Information contained in the SEE demonstrates that 12 sites (‘candidates A to L’) were investigated. However, these areas were discounted due to a variety of issues. Page 8 of the SEE states that: *Upon assessment of all candidates, this location (Location ‘L’) was ultimately deemed*
 40 *the most appropriate location as the site offers reasonable distance from the closest residential properties, existing surrounding tall vegetation, a willing landowner and the location would meet radio frequency objectives.*

The proposed development complies with the mandatory standards required by ARPANSA.

45 Council’s Environmental Health Officer stated the following in her assessment of DA 10.2010.404.1:

50 “Non-support of the development based on health grounds would be impossible to defend in court due to the lack of clear scientific evidence that exposure to low level radiofrequency EME causes adverse health effects. The Land and Environmental Court have upheld an appeal by Hutchison Telecommunication (Australia) against Ku-ring-gai Municipal Council for the refusal a telecommunications tower located at Kissing Point Road, Turramurra. To view the case in visit <http://www.austlii.edu.au>”

Koala habitat

Comment: The location of the proposed structure is a grassed area with no significant trees. There is koala habitat in the vicinity, however the specific location of the proposed development is not koala habitat.



The most obvious place to put a mobile phone tower would be in the carpark adjacent to the off ramp of the motorway on the Mullumbimby side or the Council owned land occupied by the Brunswick Volunteer Rescue in Byron St where there is currently a radio aerial for VHF communication. If this was replaced by a short mobile phone tower, then most of the tower would be hidden by the truck shed and its location backing onto the reserve would limit the visual impact.

Comment: Council is required to assess the location as proposed by the development application.

4.11 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create a dangerous precedent

4.12 Section 5A of the EP&A Act – Significant effect on threatened species

Having regard to sections 5A, 5C and 5D of the EP&A Act, there is unlikely to be a significant effect on threatened species, populations or ecological communities, or their habitats as a result of the proposed development because no significant vegetation is proposed to be removed.

4.13 Section 5B of the EP&A Act – Have regard to register of critical habitat

The NSW Critical Habitat Register does not identify any critical habitat on or adjacent to the site.

5. DEVELOPER CONTRIBUTIONS

Section 94 Contributions will be payable at construction certificate stage.

6. CONCLUSION

The DA proposes Installation of 30m high telecommunications facility and associated ancillary equipment. The building has a proposed maximum height of approximately 31.5m which exceeds the 9m maximum development standard (approximately a 250% variation). The DA is supported by a written request for a variation pursuant to clause 4.6 of LEP 2014. The circumstances of the case warrant a more flexible approach to the application of the minimum lot size development standard, the Applicant's variation request is supported and the development application is recommended for approval despite the non-compliance subject to conditions.

7. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

Note: From July 1 2018, Council's are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.

The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.

The proposed development is considered suitable for the proposed site.

How community views were addressed

The DA was advertised in accordance with Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application.