



Hawkesbury Local Planning Panel

Date of meeting: 20 June 2024
Location: Council Chambers or audio-visual link
Time: 10:00 AM

BUSINESS PAPER

HAWKESBURY LOCAL PLANNING PANEL

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1. PROCEDURAL MATTERS

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1. PROCEDURAL MATTERS

Welcome

The Chairperson will acknowledge the Indigenous Heritage and address the Hawkesbury Local Planning Panel meeting, mentioning:

- Recording of the Hawkesbury Local Planning Panel Meeting
- Statement regarding people addressing the Meeting

Attendance

Attending Panel members and Council staff members will be noted for the purposes of the Minutes.

Declaration of Interest

The Chairperson will ask for any Declaration of Interests from the attending Panel Members. These will then be addressed at the relevant item.

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2. REPORTS FOR DETERMINATION

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2. REPORTS FOR DETERMINATION

2.1.1. DA0021/24 - Lot 2, DP 630711, No.1341 St Albans Road, Central Macdonald

Directorate: City Planning

DEVELOPMENT INFORMATION

Development Application No.	DA0021/24
Date Received	27/02/2024
Proposal	Telecommunications facility
Estimated Cost	\$70,000.00
Legal Description	Lot 2, DP 630711
Property Address	No.1341 St Albans Road, CENTRAL MACDONALD
Area	30.23 Ha
Zoning	C4 Environmental Living
Applicant	Amplitel Pty Ltd
Owner	Mr Alan Lloyd & Ms Lisa Wyatt
Exhibition Dates	20/03/2024 – 03/04/2024
Submissions	Nil
Recommendation	Approval, subject to conditions.

EXECUTIVE SUMMARY

1. Reason for Consideration by Local Planning Panel

In accordance with the Environmental Planning and Assessment Act 1979, Section 9.1 – Directions by the Minister, this application is reported to the Hawkesbury Local Planning Panel for determination as the application seeks consent for a variation to a development standard exceeding 10%.

2. Proposal

The development site is located at 1341 St Albans Road, Central Macdonald (Lot 2 DP 630711) and seeks to replace an existing small cell facility on the site and construct a telecommunications facility to host Telstra equipment. The proposal includes:

- A new monopole structure with a maximum height of 41.3 metres;
- A triangular headframe onto the proposed monopole (inclusive of the maximum height);
- Six (6) Telstra panel antennas onto the proposed headframe;
- A Telstra ground-based equipment shelter;
- An existing Telstra access track upgrade, and installation of compound security fence and double access gate;

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- Ancillary equipment including feeder cables, antenna mounts, tower mounted amplifiers, remote radio units, GPS antenna, electrical works, cable trays and works within the proposed shelter; and
- Removal of small cell facility (20m monopole, omni antenna, ground-based satellite dish with mount and outdoor cabinet).

Due to insufficient mobile coverage and poor capacity, the new facility will deliver improved coverage and capacity to the Central Macdonald area. The facility is part of the Federal Government initiative, Black Summer Bushfire Recovery Program, and ensures sufficient mobile coverage during a potential natural disaster.

- **Permissibility**

The subject site is zoned C4 Environmental Living under the Hawkesbury Local Environmental Plan 2012 (HLEP 2012), with the proposed telecommunications facilities being prohibited development. However, the development application is made under the provisions of Clause 2.143(1) of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP), which permits the construction of telecommunications facilities to be carried out on any land.

- **Consultation**

In accordance with Council's Community Participation Plan 2019, the Development Application was notified to adjoining properties from 20 March 2024 to 3 April 2024. During the notification period, no submissions were received.

RECOMMENDATION

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act, 1979:

A. That, the Hawkesbury Local Planning Panel support the variation to Clause 4.3 Height of Buildings in the HLEP 2012 pursuant to Clause 4.6 for following reasons:

1. To require strict compliance of the proposed telecommunication facility would render the proposed structure inadequate for the purposes of providing much-needed telecommunications coverage across the Macdonald Valley/
2. The surrounding landform consists of predominately single dwellings and outbuilding on large rural lots. The proposed built form is not considered excessive within the context of its setting.
3. The proposal retains surrounding well-established canopy trees that effectively screens the bulk and scale of the structure from the wider area.
4. The proposed building height of 41.3m is not unreasonable in the circumstances of the development, which is for a much needed facility and would have an adverse visual impact on it's the surrounding area.

B. That the Hawkesbury Local Planning Panel, exercising the function of the consent authority, approve development consent to DA0021/24 for the replacement of an existing small cell facility and construction of a telecommunication facility on land at No.1341 St Albans Road, CENTRAL MACDONALD for the following reasons:

1. The proposed development is permissible by virtue of Clause 2.143(1) of the State Environmental Planning Policy (Transport and Infrastructure) 2021 and satisfies the requirements of all applicable planning controls;

2. The proposed development would deliver improved coverage and capacity to the Central Macdonald area and ensures sufficient mobile coverage during a potential natural disaster;
 3. The proposed development would be of a scale that would visually recede into the prevailing rural landscape and would not unreasonably impinge on the surrounding context;
 4. The development would not create unreasonable demands for the provision or extension of public amenities and services; and
 5. For the reasons given above, approval of the application is in the public interest.
-

BACKGROUND

1. Detailed Description of Proposal

The proposal seeks consent for the construction of a new telecommunications facility and will include the following:

- A new monopole structure with a maximum height of 41.3 metres;
- A triangular headframe onto the proposed monopole (inclusive of the maximum height);
- Six (6) Telstra panel antennas onto the proposed headframe;
- A Telstra ground-based equipment shelter;
- An existing Telstra access track upgrade, and installation of compound security fence and double access gate;
- Ancillary equipment including feeder cables, antenna mounts, tower mounted amplifiers, remote radio units, GPS antenna, electrical works, cable trays and works within the proposed shelter; and
- Removal of small cell facility (20m monopole, omni antenna, ground-based satellite dish with mount and outdoor cabinet).

The location of the works are situated within a proposed lease area measuring 15m x 10m located within the boundaries of the lot.

2. Site and Locality Description

The subject site is legally described as Lot 2, DP 630711, No. 1341 St Albans Road, Central Macdonald.

The site is an irregular shaped allotment with an overall site area of 30.23 hectares and has an east facing frontage to Macdonald River to the east. From Macdonald River, the site rises steeply approximately 220m to the ridge to the south-west. St Albans Road intersects the site in a north-west to south-east direction.

The site accommodates a single dwelling and ancillary structures, including several sheds. Vehicular access is gained via a formed concrete driveway from St Albans Road. A dam is located to the south of the existing residence. The site is densely vegetated with an established tree canopy to the south-west to the rear of the site.

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The site is located approximately 4.5 kilometres north of the Lower Macdonald village. The site is in a C4 Environmental Living zone and is surrounded by large rural lots along the Macdonald River. The surrounding development is characterised by low-density, single dwellings and outbuildings associated with various rural land uses.

The subject site is located west of the Macdonald River and directly adjoins C1 National Parks and Nature Reserves zone to the south-west. The site is located directly adjacent to the Macdonald Valley Public School to the south-east.



Figure 1 Aerial image of subject site outlined in yellow (Source: NSW Spatial Viewer)



Figure 2 Zoning Map with subject site outlined in yellow (Source: DoP Spatial Viewer)

3. Relevant Site History

The site has not been subject to any previous development applications other than the current development application DA0021/24, which was lodged on 27 February 2024.

A Satellite Small Cell facility was constructed on the subject site in 2020 under the Exempt and Complying Development provisions pursuant to the now repealed *State Environment Planning Policy (Infrastructure) 2007*.

4. The Proposal

The proposal seeks consent for the construction of a new telecommunications facility and will include the following:

- A new monopole structure with a maximum height of 41.3 metres;
- A triangular headframe onto the proposed monopole (inclusive of the maximum height);
- Six (6) Telstra panel antennas onto the proposed headframe;
- A Telstra ground-based equipment shelter;
- An existing Telstra access track upgrade, and installation of compound security fence and double access gate;
- Ancillary equipment including feeder cables, antenna mounts, tower mounted amplifiers, remote radio units, GPS antenna, electrical works, cable trays and works within the proposed shelter; and
- Removal of small cell facility (20m monopole, omni antenna, ground-based satellite dish with mount and outdoor cabinet).

The location of the works are situated within a proposed lease area measuring 15m x 10m located within the boundaries of the lot.

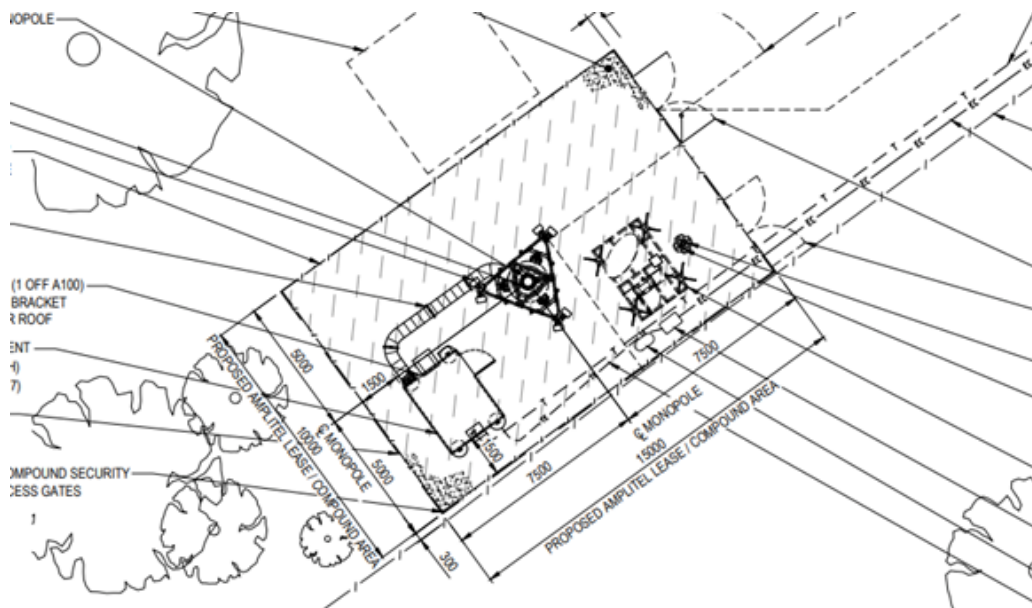


Figure 3 Site Setout Plan (Source: Decon Technologies)

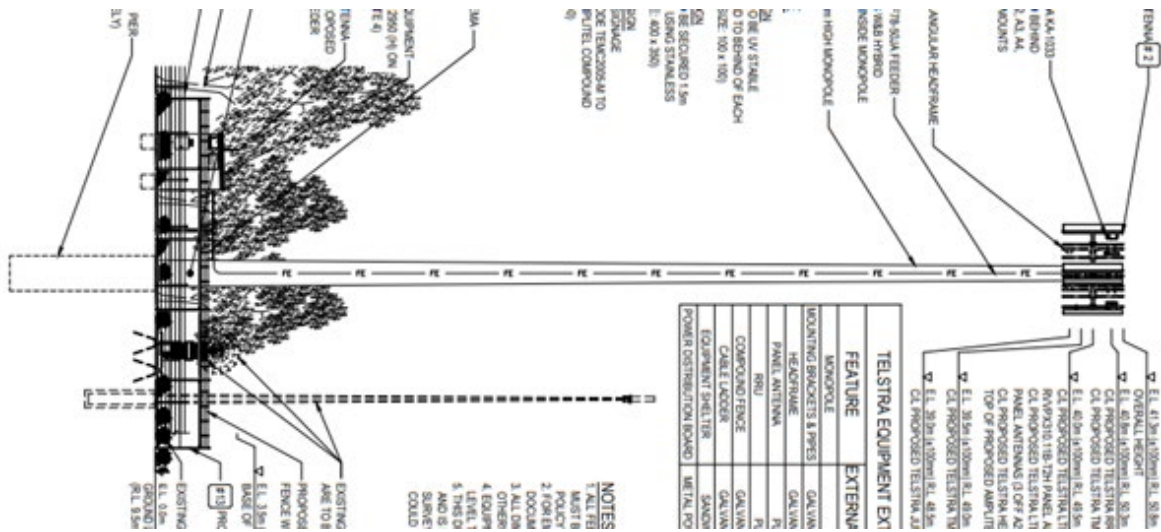


Figure 4 South-East Elevation Plan (Source: Decon Technologies)

5. Relevant Application History

Date	Comment
27/02/2024	Application lodged into Council’s system.
8/03/2024	Internal and external referrals to Council’s building surveyor, development engineer and NSW Rural Fire Service.
20/03/2024 – 03/04/2024	Neighbour notification period

6. Referrals

Department	Comment
Building Surveyor	No objections, subject to conditions of consent.
Engineering	No objections, subject to conditions of consent.
NSW Rural Fire Service	No objections, subject to conditions of consent.

7. Environmental Planning Instruments

7.1 Overview

The instruments applicable to this application are:

- State Environmental Planning Policy (Biodiversity & Conservation) 2021;
- State Environmental Planning Policy (Resilience & Hazards) 2021;
- State Environmental Planning Policy (Transport & Infrastructure) 2021;
- Hawkesbury Local Environmental Plan 2012 (LEP 2012);
- Hawkesbury Development Control Plan 2002 & 2023 (HDCP 2002 & 2023); and

- Hawkesbury City Council Flood Policy 2020

7.2 State Environmental Planning Policy (Biodiversity & Conservation) 2021

The State Environmental Planning Policy (Biodiversity & Conservation) 2021 (Biodiversity and Conservation SEPP) applies to the site.

Chapter 2 – Vegetation in Non-Rural Areas

The Biodiversity and Conservation SEPP regulates clearing that is not ancillary to development requiring consent. Whereas, clearing that is ancillary to development requiring consent will be assessed as part of the development assessment process. The area of proposed works is located in a previously disturbed area of the site, including the proposed 150m² lease area. As such, the proposal does not include the removal of any trees.

Chapter 6 – Water Catchments

Chapter 6 of the Biodiversity and Conservation SEPP generally aims to improve water quality and river flows, protect and enhance the environmental quality of water catchments and ensure consistency with local environmental plans and principles of ecologically sustainable development. The site is mapped as being located within the Hawkesbury-Nepean Catchment. The proposal has been designed to avoid adverse impact upon water quality and river flows. The proposal maintains the existing landscaped character of the site, including retaining existing native vegetation including canopy trees to enhance the site's environmental qualities. The proposal has been designed to respond to the surrounding site context, environmental considerations to ensure the principles of ecologically sustainable development are demonstrated.

The proposal has been considered against Clause 6.13 of the SEPP. The proposal is not considered to cause interference with the sub-catchment or create adverse impacts to the structure and floristics of native vegetation. The subject site contains existing residential development, with the proposed alterations and additions not considered to create detrimental scenic quality impacts.

Part 13.4 – Strategic Conservation Planning

The development does not include the removal of native vegetation in order to accommodate for the proposed works. The proposal is not considered to create adverse impacts to any significant vegetation in the immediate area and will not cause detrimental impacts to the ecological function of the locality.

7.3 State Environmental Planning Policy (Resilience and Hazards) 2021

The State Environmental Planning Policy (Resilience and Hazards) 2021 applies to the site.

Chapter 4 – Remediation of Land

The aims of this chapter are to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. In accordance with this chapter, Council must consider if the land is contaminated, and if it is contaminated, if the land is suitable for the proposed use.

The proposal includes the construction of a telecommunications facility. Minimal earthworks are proposed as part of this application. Given the existing use of the subject site and, in particular the proposed lease area previously used for the purposes of a telecommunications facility, as well as no previous application records indicating potential contamination, there is no specific evidence that indicates the site is contaminated. This is considered to be acceptable in this instance.

7.4. State Environmental Planning Policy – Transport and Infrastructure 2021

The relevant matters to be considered under Chapter 2 of State Environmental Planning Policy – Transport and Infrastructure 2021 for the proposed development outlined below:

“Division 21 Telecommunications and other telecommunication facilities

Clause 2.143 Development permitted with consent

- *Development for the purposes of telecommunications facilities, other than development in section 2.141 or development that is exempt development under section 2.20 or 2.144, may be carried out by any person with consent on any land.*
- *Before determining a development application for development to which this section applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.”*

The proposal has been considered against the *NSW Telecommunications Facilities Guideline, Including Broadband (October 2020)*. Compliance with the requirements specified within this guideline is addressed below:

Compliance with NSW Telecommunications Facilities Guideline	Response
Principle 1 – Design and site telecommunications facilities to minimise visual impact	
<i>(a) As far as practical, integrate a telecommunications facility that is mounted on an existing building or structure with the design and appearance of the building or structure.</i>	Not applicable given the proposal is for a new telecommunications facility.
<i>(b) Minimise the visual impact of telecommunications facilities, reduce visual clutter (particularly on tops of buildings) and ensure physical dimensions (including support mounts) are sympathetic to the scale and height of the building to which it is to be attached and to adjacent buildings.</i>	<p>The proposal is supported by a detailed visual impact assessment.</p> <p>The VIA considers the densely vegetated surrounds with other overhead infrastructure also located, as well as the existing 20m monopole small cell facility.</p> <p>The applicant provides the following comment in relation to the visual impact of the tower:</p> <p><i>The existing small cell facility will be decommissioned to restrict the introduction of additional vertical objects in the landscape, thus maintaining the status quo, albeit a taller structure required to maintain operational necessities. It is considered that the proposal will not detrimentally impact on the overall landscape vista encompassed by the location.</i></p> <p><i>Visual impacts are considered mitigated due to the existing mature vegetation providing natural screening and vertical infrastructure in the vicinity of the subject location which creates a context for the facility within the landscape. It is not considered that the tower will be visually</i></p>

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Compliance with NSW Telecommunications Facilities Guideline	Response
	<p><i>dominant to road users along nearby roads due to the extensive mature vegetation established within the area.</i></p> <p><i>Therefore, it is considered that the proposed facility is appropriately located in the setting and will be well screened by existing vegetation at ground level at a site where vertical obtrusions currently reside, rescinding any adverse visual impacts for surrounding land users.</i></p> <p>In this regard, the proposal is considered satisfactory.</p>
<p><i>(c) If a telecommunications facility protrudes from a building or structure and is predominantly seen against the sky, either match the prevailing colour of the host building or structure or use a neutral colour such as pale grey.</i></p>	<p>The proposed tower is situated on a cleared, disturbed parcel of land.</p> <p>The proposal is a standalone structure made of concrete.</p> <p>Antennas and ancillary equipment on the headframe will be a neutral grey colour to best blend with the sky background.</p>
<p><i>(d) Where possible and practical, screen or house ancillary facilities using the same colour as the prevailing background and consider using existing vegetation or new landscaping.</i></p>	<p>The proposed equipment shelter will be screened by existing vegetation to best blend with the vegetation at ground level. Additionally, it will be finished with neutral colouring to further reduce the impact.</p>
<p><i>(e) Locate and design a telecommunications facility in a way that responds to its setting (rural, residential, industrial, or commercial).</i></p>	<p>The site has been selected within a lot hosting an existing small cell communications facility. This existing facility will be decommissioned, thus restricting additional vertical objects within the locality</p>
<p><i>(f) Site and design a telecommunications facility located on or adjacent to a listed heritage item or within a heritage conservation area with external colours, finishes and scale sympathetic to the heritage item or conservation area.</i></p>	<p>Not applicable.</p>
<p><i>(g) Locate telecommunications facilities to minimise or avoid obstructing significant views of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land.</i></p>	<p>The proposal will not obstruct any significant views, vistas, heritage items, landmarks, panoramas or generate any adverse visual impacts for the surrounding land uses.</p>
<p><i>(h) Consult with relevant council when proposing pruning, lopping, or removing any tree or vegetation. Obtain a tree preservation order, permit or development consent if required.</i></p>	<p>Not applicable.</p>
<p><i>(i) Remove redundant telecommunications facilities and restore the site to the condition it was in prior to the facility's construction.</i></p>	<p>The existing small cell facility will be decommissioned as part of this project. It is understood that the equipment is required to maintain operational services, and as such, the existing tower will not be decommissioned until</p>

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Compliance with NSW Telecommunications Facilities Guideline	Response
	the new tower is built. The build timeframe is typically only 5-6 weeks in total. A condition of consent prior to OC is recommended requiring the existing tower to be decommissioned and removed from the site.
<i>(j) Remove redundant components of existing facilities after upgrades.</i>	Not applicable.
<i>(k) Where possible, consolidate telecommunications facilities to reduce visual clutter and work with other users on co-location sites to minimise cumulative visual impact.</i>	The applicant has provided detailed information in relation to the site selection process which was undertaken in determining the most suitable location for the tower. During this process collocation options were considered, but were non-existent due to the options not providing the required coverage objectives. It is noted that once deployed the new 41.3m monopole provides opportunities for other carriers, providers, and most importantly emergency service organisations to collocate in the future.
<i>(l) Accord with all relevant industry design guides when siting and designing telecommunications facilities.</i>	The siting and design of the proposed telecommunications facility is generally compliant with the New South Wales Telecommunications Facility Guideline, as released by the NSW Department of Planning and Environment.
<i>(m) Assess potential visual impact in alternative site assessments.</i>	A detailed visual impact assessment accompanies the DA submission which also considered alternate sites. The proposed location was considered most appropriate from a VIA perspective.
Principle 2 – Co-locate telecommunications facilities wherever practical	
<i>(a) As far as practical, locate telecommunications lines underground or within an existing underground conduit or duct.</i>	All proposed conduits will be installed underground.
<i>(b) Where practical, co-locate or attach overhead lines, antennas and ancillary telecommunications facilities to existing buildings, public utility structures, poles, towers or other radiocommunications equipment to minimise clutter.</i>	It is considered that there are no suitable co-location opportunities within the subject area.
<i>(c) Consider extending an existing tower as a practical co-location solution to new towers.</i>	Not applicable.
<i>(d) Demonstrate that co-location is not practicable¹ if choosing not to co-locate a facility.</i>	It is considered that there are no suitable co-location opportunities within the subject area.
<i>(e) If choosing to co-locate, design, install and operate a telecommunications facility so that resultant cumulative levels of radio frequency emissions are within the maximum human exposure levels set out in RPS S-1.</i>	Not applicable.
Principle 3 – Meet health standards for exposure to radio emissions	

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Compliance with NSW Telecommunications Facilities Guideline	Response
<i>(a) Design, install and operate a telecommunications facility so that maximum human exposure levels to radiofrequency emissions comply with RPS S-1 (see Appendix C).</i>	It is the legal obligation for any carrier to ensure that any telecommunications equipment is operated within the human exposure limits within the Radio Protection Standard. The maximum human exposure levels have been calculated to be 1.07% of the public exposure limit.
<i>(b) Using the format required by ARPANSA, report on predicted levels of EME surrounding any development covered by the Industry Code C564:2020 Mobile Phone Base Station Deployment, and how the development will comply with ACMA safety limits and RPS S-1.</i>	An EME Environmental Report has been included within the supporting documentation. The EME Environmental Report is in accordance with the format prescribed by Australian Radiation Protection Nuclear Safety Agency.
Principle 4 – Minimise disturbance and risk, and maximise compliance	
<i>(a) Ensure the siting and height of a telecommunications facility complies with the of the Commonwealth Civil Aviation Regulations 1998 and Airports (Protection of Airspace) Regulations 1996. Avoid penetrating any obstacle limitation surface (OLS) shown on a relevant OLS plan for an aerodrome or airport (as reported to the Civil Aviation Safety Authority) within 30 km of the proposed development.</i>	The proposal is compliant with the Civil Aviation Regulations 1988 and the Airports (Protection of Airspace) Regulations 1996. The proposal does not penetrate any Obstacle Limitation Surface.
<i>(b) Ensure no adverse radio frequency interference with any airport, port or Commonwealth defence navigational or communications equipment, including the Morundah Communication Facility, Riverina</i>	The proposed equipment at the subject site is licensed as per ACMA regulations. As a result, there is to be no interference with other civil and military communications facilities.
<i>(c) Carry out the telecommunications facility and ancillary facilities in accordance with any manufacturer's installation specifications.</i>	The proposed equipment is to be installed as per the manufacturer's specifications.
<i>(d) Protect the structural integrity of any building or structure on which a telecommunications facility is erected.</i>	Not applicable.
<i>(e) Erect the telecommunications facility wholly within the boundaries of a property as approved by the relevant landowner.</i>	The proposed 15m x 10m lease area is to be located within the boundaries of the lot and will not encroach on surrounding property boundaries.
<i>(f) Ensure all construction of a telecommunications facility accords with Managing Urban Stormwater: Soils and Construction – Volume 1 (Landcom 2004), or its replacement.</i>	The construction of the proposal is to adhere to and comply with the regulations set out within the Blue Book – 'Managing Urban Stormwater: Soils and Construction' (Landcom 2004). Conditions will be applied.
<i>(g) Mitigate obstruction or risks to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction.</i>	The site is not generally accessible by pedestrians or vehicles, and will be fenced during construction.

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Compliance with NSW Telecommunications Facilities Guideline	Response
<i>(h)Where practical, carry out work at times that minimise disruption to adjoining properties and public access and restrict hours of work to 7.00am and 5.00pm, Mondays to Saturdays, with no work on Sundays and public holidays.</i>	Construction works will be conducted between 7.00am and 5.00pm, Mondays to Saturdays or as per the recommended hours stipulated by conditions of consent.
<i>(i)Employ traffic control measures during construction in accordance with Australian Standard AS1742.3-2002 Manual of uniform traffic control devices – Part 3: Traffic control devices for works on roads.</i>	Any required traffic control will be conducted in accordance with the relevant Australian Standard S S1742.3-2002 Manual of uniform traffic control devices – Traffic control devices on roads
<i>(j)Guard open trenching in accordance with Australian Standard Section 93.080 – Road Engineering AS1165 – 1982 – Traffic hazard warning lamps.</i>	Open trenching for the installation of underground power and fibre will be executed in compliance with the Australian Standard Section 93.080 – Road Engineering AS1165 – 1982 – Traffic hazard warning lamps.
<i>(k)Minimise disturbance to flora and fauna and restore land to a condition similar to its condition before the work was carried out.</i>	Not applicable.
<i>(l)Identify any potential impacts on threatened species and communities in consultation with relevant authorities and avoid disturbance to identified species and communities where possible.</i>	There will be no impact on threatened species or communities.
<i>(m)Identify the likelihood of harming an Aboriginal place and/or Aboriginal object and obtain approval from the Department of Premier and Cabinet if the impact is likely, or Aboriginal objects are found.</i>	Not applicable.
<i>(n)Reinstate, at your expense, street furniture, paving or other facilities removed or damaged during construction to at least the same condition as that prior to installation.</i>	Not applicable.
Principle 5 – Undertake an alternative site assessment for new mobile phone base stations	
<i>(a)Include adequate numbers of alternative sites in the alternative site assessment as a demonstration of good faith.</i>	A detailed site selection process was undertaken by the applicant and accompanies the DA submission.
<ul style="list-style-type: none"> • <i>In addition to the new site selection matters in Section 4 of the Industry Code C564:2020 Mobile Phone Base Station Deployment:</i> • <i>only include sites that meet coverage objectives, and that have been confirmed as available, with an owner agreeable to having the facility on their land.</i> • <i>if the preferred site is a site owned by the Carrier, undertake a full assessment of the site.</i> 	<p>The applicant has provided the following comments in relation to the site selection process.</p> <p><i>Whilst several of the candidates did not meet the required RF coverage objectives, they would if the height of the proposed monopole which would have significant visual impact. Other candidates which did have interested landowners were dismissed given the extensive vegetation clearing required to provide access to any potential site locations. Lastly, whilst not a determining factor in candidate site selection, the landowner whilst interested had annual</i></p>

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Compliance with NSW Telecommunications Facilities Guideline	Response
<ul style="list-style-type: none"><i>indicate the weight placed on selection criteria.</i><i>undertake an assessment of each site before any site is dismissed.</i>	<i>rental expectations that were not commercially viable in deploying a facility at this location.</i>

The proposed development has demonstrated its consistency to the *NSW Telecommunications Facilities Guideline, Including Broadband (October 2020)*.

8. Hawkesbury Local Environmental Plan 2012

The relevant matters considered under the HLEP 2012 for the proposed development are outlined below:

8.1. Clause 1.2 Aims of plan

“(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,

- to provide the mechanism for the management, orderly and economic development and conservation of land in Hawkesbury.*
- to provide appropriate land in area, location and quality for living, working and recreational activities and agricultural production,*
- to protect attractive landscapes and preserve places of natural beauty, including wetlands and waterways,*
- to protect and enhance the natural environment in Hawkesbury and to encourage ecologically sustainable development,*
- to conserve and enhance buildings, structures and sites of recognised significance that are part of the heritage of Hawkesbury for future generations,*
- to provide opportunities for the provision of secure, appropriate and affordable housing in a variety of types and tenures for all income groups in Hawkesbury,*
- to encourage tourism-related development that will not have significant adverse environmental effects or conflict with other land uses in the locality.”*

The proposal is considered to align with the aims of the plan under Clause 1.2(b)(c)(d).

8.2. Clause 2.3 Zone objectives and land use table

The site is zoned C4 Environmental Living under the HLEP 2012. The objectives of the C4 zone are as follows:

- *“To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To restrict development on land that is inappropriate for development because of its physical characteristics or bushfire risk.*
- *To ensure that land uses are compatible with existing infrastructure, services and facilities and with the environmental capabilities of the land.*
- *To encourage existing sustainable agricultural activities.*
- *To ensure that development does not create or contribute to rural land use conflicts.*
- *To promote the conservation and enhancement of local native vegetation, including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.*
- *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.”*

The proposed development is considered to be reflective of the above objectives.

‘Telecommunications facility’ is defined pursuant to HLEP 2012 as follows:

“telecommunications facility means -

- *any part of the infrastructure of a telecommunications network, or*
- *any line, cable, optical fibre, fibre access node, interconnect point equipment, apparatus, tower, mast, antenna, dish, tunnel, duct, hole, pit, pole or other structure in connection with a telecommunications network, or*
- *any other thing used in or in connection with a telecommunications network.”*

The proposed development is best described as a ‘telecommunications facility’, which is prohibited in the C4 zone under the HLEP 2012; however, as noted above, the proposal is permitted with consent under the Transport and Infrastructure SEPP.

Clause	Comment
Part 4 – Principal development standards	
4.1 Minimum subdivision lot size	The application does not include subdivision works.
4.2 Rural subdivision	N/A
4.3 Height of buildings	The maximum permitted building height on the site is 10 metres. The proposed building height is 41.3 metres, which represents a numerical non-compliance of 313%. The application is supported by a written

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Clause	Comment
	request to vary the development standard pursuant to Clause 4.6 of HLEP 2012 is discussed later in this report.
4.4 Floor Space Ratio	There is no nominated FSR for the site.
4.6 Exceptions to development standards	The proposal seeks a variation to Clause 4.3, as above. A Clause 4.6 Written Request has been submitted by the applicant. A detailed assessment can be found further below.
Part 5 – Miscellaneous provisions	
5.1A Development on land intended to be acquired for public purposes	The deposited plans do not demonstrate that the site is or will be subject to future land acquisition.
5.10 Heritage conservation	The site is not mapped as being an item of heritage significance.
5.11 Bush fire hazard reduction	The site is mapped as being located on bushfire prone land. The DA was referred to NSW Rural Fire Service who had issued conditions of consent.
5.21 Flood planning	The area of the site where the building is to be constructed is identified as flood prone in the 1% AEP flood and PMF event. The proposal has been referred to Council's development engineer for review. The proposal is found to be reasonable on flooding grounds.
Part 6 – Additional local provisions	
6.1 Acid sulphate soils	The area of the subject site where the works are located is mapped as containing Class 5 Acid Sulfate Soils. The proposal includes minimal earthworks in order to accommodate for the proposed telecommunications facility.
6.2 Earthworks	Council's development engineers have reviewed the proposed earthworks involved and support the application subject to the imposition of conditions.
6.6 Development in areas subject to aircraft noise	The site is not considered to fall within the vicinity of the RAAF base Richmond.
6.7 Essential services	The subject site is appropriately serviced. The nature of the development will not place unnecessary strain on these services.

8.3 Clause 4.6 Exceptions to development standards

Description of non-compliance

Development Standard:	Clause 4.3 - Building height
Requirement:	10 metres
Proposed:	41.3 metres
Percentage variation to requirement:	313%

Assessment of request to vary a development standard:

The following assessment of the variation to maximum building height under Clause 4.3 of the Hawkesbury Local Environmental Plan 2011, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron*

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Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

- *The objectives of this clause are as follows:*
- *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

The Clause 4.3 Height of buildings development standard is not expressly excluded from the operation of this clause.

- *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *That there are sufficient environmental planning grounds to justify contravening the development standard.*
- *Development consent must not be granted for development that contravenes a development standard unless:*
- *The consent authority is satisfied that:*
- *The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- *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, and*
- *The concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

The Applicant's written request states that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case on the following grounds:

"Commonly, the building height limit of an area is in place to ensure the scale and bulk of development is kept in line with the locality in which it is being proposed. This applies specifically to low density residential dwellings in a rural landscape in the Central MacDonald area. As an uncommon development type, mobile telecommunications facilities fall foul of height limits within almost every CBD, suburban, urban, regional, and rural environment.

In this instance, the zoning of the subject land parcel is environmental living, and while the building height restriction would usually apply to any new low-density dwellings, it is difficult to define a telecommunications facility as a low-density residential dwelling in a rural landscape (i.e. environmental living) use. As such, it is considered that the height of buildings development standard is not relevant and is unnecessary.

It is the inherent nature of a telecommunications facility that they be of a height that is above the area which it intends to service. As such, it is almost never the case that a telecommunications facility can adhere to Council building height limits.

For a telecommunications facility to operate, it is necessary to have a height that allows the antennas to provide coverage services above and over the existing landforms and developments. As a single telecommunications facility is intended to service as wide an area as is possible, height is necessary to achieve this. Should a facility be only slightly higher than surrounding elements in the environment, it will not provide service to a wide area, and numerous facilities will be required to service the area. Essentially, it is not feasible or practical to have a telecommunications facility that would adhere to the height limit as described in the Hawkesbury LEP 2012.

The limit of 10m in the proposed site location would provide no services to the surrounding area, noting the existing facility (to be replaced) is already at 20m and is inadequate in delivering connectivity. Therefore, the much needed required proposed upgrade increases the structure height to 40m to adequately service the wider area. The additional height provided by this proposed structure on 1341 St Albans Road, Central MacDonald NSW 2775 ensures that Telstra's Network objectives can be met in the surrounding area, both now and into the future."

Council response

This assessment concurs with the justification provided by the applicant above.

To require strict compliance in the case of the proposed telecommunication facility would render the proposed structure inadequate for the purposes of providing much-needed telecommunications coverage across the Macdonald Valley.

- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*"As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act."*

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- *to promote the orderly and economic use and development of land,*
- *to promote the delivery and maintenance of affordable housing,*
- *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- *to promote good design and amenity of the built environment,*
- *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- *to provide increased opportunity for community participation in environmental planning and assessment.*

The applicant's written request states:

- *"The site currently hosts an existing small cell facility, including a 20m monopole (to be replaced);*
- *The facility is located specifically to provide reliable mobile phone service to the area surrounding the site, including the residential and business areas and adjoining road links;*
- *The use of a monopole with minimal bulk ensures that visual impact is significantly mitigated;*
- *The proposal is consistent with the relevant provisions of the Hawkesbury LEP and Development Control Plan (DCP) 2023, by siting the facility within a rural (i.e. environmental living) area, as outlined in the accompanying SEE;*
- *The facility will ensure the provision of improved mobile phone coverage and competition in the area;*
- *The site location is able to ensure that Telstra's network reconfiguration, which will assist in the implementation of future network growth can proceed efficiently;*

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- *This deployment is part of the Federal Government initiative, Black Summer Bushfire Recovery Program, and ensures sufficient mobile coverage during a potential natural disaster, including bushfire and flood;*
- *Emissions from the proposed facility will be significantly below the Australian Radiation Protection and Nuclear Safety Agency standards adopted by the Australian Communications and Media Authority; and*
- *When viewed from surrounding roads and areas, it is not expected that the proposed facility will be seen as a negative visual addition in the locality due primarily to sightings of the proposed facility will be obscured by the existing vegetation and topography. Any visual impact of the proposed facility is further mitigated by the use of a monopole structure, providing a slimline structure that is far less visually obtrusive than the bulk of a lattice tower."*

Comment:

The above justification provided by the applicant has demonstrated that the proposed development is an orderly and economic use and development of the land (being of a form anticipated and required for telecommunications facility), therefore satisfying (c) of Clause 1.3 Objects of the EPA Act.

Therefore, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b). Council is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of buildings development standard and the objectives of the C4 Environmental Living. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2010 are:

- The objectives of this clause are as follows:
- *To protect privacy and the use of private open space in new development and on adjoining land,*

Comment:

Due to the nature of the proposed development, the privacy and use of private open space on adjoining land will not be impacted by the proposal.

- *To ensure that the bulk of development is not excessive and relates well to the local context,*

Comment:

The bulk and scale of the telecommunications facility is commensurate with the anticipated bulk and scale of such a facility. The surrounding landform consists of predominately single dwellings and outbuilding on large rural lots. The proposed built form is not considered excessive within the context of the rural setting that consists of predominately single dwellings and outbuildings on large lots. The proposal retains surrounding well-established canopy trees that effectively screens the bulk and scale of the structure from the wider area.

- *To nominate heights that will provide a transition in built form and land use intensity,*

Comment:

Notwithstanding the height variation, the proposed building height of 41.3m is not unreasonable in the circumstances of the development, which is not a typical low-density residential land use.

- *To ensure an appropriate height transition between new buildings and heritage items.*

Comment:

The site does not adjoin a heritage item with the nearest heritage item located over 900m to the east from the subject site.

Zone objectives

The underlying objectives of the C4 Environmental Living zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

Not applicable. The proposal is not for the purposes of residential development.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

Not applicable. The proposal is not for the purposes of residential development.

- *To restrict development on land that is inappropriate for development because of its physical characteristics or bushfire risk.*

Comment:

The land is not considered inappropriate with its physical characteristics and bushfire risk considered accordingly. The bushfire risk has been considered by NSW RFS and conditions applied.

- *To ensure that land uses are compatible with existing infrastructure, services and facilities and with the environmental capabilities of the land.*

Comment:

The proposed land use is compatible with the existing infrastructure, services and facilities and with the environmental capabilities of the land.

- *To encourage existing sustainable agricultural activities.*

Comment:

Not applicable.

- *To ensure that development does not create or contribute to rural land use conflicts.*

Comment:

The development will not create or contribute to rural land use conflicts.

- *To promote the conservation and enhancement of local native vegetation, including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.*

Comment:

The development retains existing native vegetation by locating works within existing disturbed areas of the site.

- *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.*

Comment:

The proposal requires minimal earthworks, therefore will not adversely impact on surface and groundwater quality and flows, land surface conditions. The proposed works are located away from water catchments.

The submitted written request is considered to be well-founded having regard to the circumstances of the development and it is therefore considered appropriate that flexibility in the application of the development standard be applied in this instance. In this context, the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under Section 4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the height of buildings development standard is assumed by the Local Planning Panel

9. Hawkesbury Development Control Plan 2002 and 2023

Consideration of the relevant provisions within the Hawkesbury Development Control Plan 2002 & 2023 is provided below:

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CONTROL	COMPLIANCE
Chapter 5: Telecommunications	
5.1 Objectives for Telecommunications Facilities	
<p>Any land zoned Rural, Residential, Special Uses, Open Space, Environmental Protection, Nature Reserve, Proposed Road under HLEP 1989 and land immediately adjacent to these zones.</p> <p>A minimum of 300 metres from any school, childcare centre or hospital.</p>	<p>The DCP requires telecommunications facilities to be a minimum of 300m from any school. The proposed facility is located adjacent to Macdonald Valley Public School, therefore located within 300m. Notwithstanding, the propos</p>
<p>Any land zoned Rural, Residential, Special Uses, Open Space, Environmental Protection, Nature Reserve, Proposed Road under HLEP 1989 and land immediately adjacent to these zones.</p> <p>A minimum of 300 metres from any residential dwelling unless annual average exposure at any such premises is less than 0.2 uw/cm2.</p>	<p>The structure is located approximately 150m from the nearest dwelling.</p> <p>At a fundamental level, telecommunications facilities must be located near the area they are to provide mobile telecommunications coverage to. Based on research undertaken by the applicant of other potential locations for the telecommunications facility, that there are no viable locations identified what are capable of achieving the coverage objectives located greater then 300m from a dwelling.</p> <p>EME exposure levels are 98.93 times lower than the public exposure limit of the ARPANSA Standard.</p>
<p>All zones, including the above.</p> <p>To minimise visual impact, no tower may be constructed closer than 100 metres or three times the height of the tower, whichever is the greater, to any residential dwelling.</p> <p>This criteria does not apply to residences in business, industrial, nature reserves and special use zones.</p> <p>This condition does not apply in cases of colocation or location on existing built structures</p>	<p>The subject site is not located within 120m (three times structure height) from the nearest dwelling.</p> <p>It is noteworthy to mention that the proposal does seek to replace an existing telecommunications facility on the land, albeit 20m shorter than the proposed structure to limit the number of tall structures within the Environmental living zone.</p> <p>The applicant has undertaken a comprehensive visual impact assessment contained with the supporting SEE.</p>
5.2 Key Assessment Issues	
<p>Proposals for telecommunication facilities should utilise buildings, structures or other non-residential and non-community based features of the built environment for support of towers, antennae and ground based facilities, wherever possible.</p>	<p>A detailed site selection process was undertaken in determining site suitability. The findings of this process confirmed there are no viable co-location facilities of existing tall structures within the search area, therefore necessitating a new facility.</p> <p>The subject site hosts a 20m small cell facility, however this structure is too small to accommodate the additional Telstra mobile telecommunications requirement, necessitating the need for a taller structure. It is noteworthy that as part of this proposal the existing small</p>

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CONTROL	COMPLIANCE
	cell facility will be decommissioned. This will restrict the number of tall new elements in the landscape, provide a better coverage while facilitating the colocation of the Telstra mobile telecommunications facility.
Proposals for towers greater than 5 metres in height are encouraged to locate in commercial/industrial zones, and/or premises used for commercial premises.	The proposal will be located in an existing private property currently used for a small cell facility.
Proposals for towers should provide evidence of investigation into co-locating with other carriers, wherever possible.	As part of the site selection process, it was confirmed that any colocation options are too far from the search area and does not achieve the coverage objectives for the site, therefore we are unable to pursue that co-location opportunity further.
Proposals for towers in rural zones should avoid locations in close proximity from any residences.	Not applicable. The site is not in a rural zone.
Proposals for towers and/or other telecommunication works should avoid environmentally sensitive lands including wetlands, creeks and protected habitats of endangered flora and fauna.	The area of land identified for the structure is not located near wetlands, creeks or protected habitats of endangered flora and fauna. The area of work is located in a previously disturbed area of land, therefore not requiring the removal or disturbance of vegetation.
Proposals for towers should be located to have minimal visual impact.	The proposed tower will have minimal and acceptable visual impact on the landscape. The location of the tower in the position of an existing tower, avoiding vegetation removal will further minimise visual impact of the tower on the wider locality.
Proposals for aerial cabling will only be considered where there is existing aboveground cables or wires within the same street or locality. Where underground services are provided, every effort should be made to coordinate the provision of underground telecommunication facilities.	Not applicable. The proposal does not include aerial cabling.
Any proposal for a tower needs to justify the location in terms of “servicing areas”.	<p>The applicant provides the following response:</p> <p><i>“Throughout this entire report various sections have demonstrated this location is required to deliver the needed coverage to the Central MacDonald area where other candidates cannot deliver this. Noting the site currently houses a small cell facility, however, does not provide for connectivity needs in recent years. As a result, a new taller structure is required to deliver the needed coverage, especially in natural disaster situations, including bushfire emergencies.”</i></p> <p>There is considered sufficient grounds to justify the location of the structure in terms of “servicing areas”.</p>
5.3 Matters for Consideration	

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The need for the proposal with respect to expansion of the carrier's network and alternatives examined within the proposed area to be covered.	The proposal is necessary to provide enhanced mobile telecommunications coverage to Central MacDonald and surrounding area.
The proximity of the proposed facility to residential and community facility land uses.	The site is located on land where an existing small cell facility is located. This existing facility will be decommissioned as part of the project. The adjoining public-school interface will be maintained similar to the existing site condition.
The visual impact of the proposal and measures to ameliorate this impact.	The visual impact of the tower has been appropriately considered through the retention of existing vegetation and substantial separation to St Albans Road and surrounding land uses.
Site access, security and landscaping proposals.	The site will be accessed via existing track and access gates off St Albans Road. Landscaping is not required given the existing vegetation in place surrounding the small cell facility in operate at site.
The impact of electromagnetic radiation on public health, safety and other electronic communications.	Telstra has obligations to comply with mandated standards set by ARPANSA. EME exposure levels are 98.93 times lower than the public exposure limit of the ARPANSA Standard.
Any submissions received from the public.	No submissions were received during the community consultation period.

Hawkesbury City Council Flood Policy 2020

The application has been assessed against Council's Flood Policy with consideration of the approximate flood extents of the Hawkesbury River. The 1:100 flood level is identified as being at 11.3m AHD. The provided plans show the RL of the bottom of the structure being 9.5m ADH, therefore below the flood planning level. Council's Development Engineer has reviewed the proposal from a flooding perspective and deemed that the submitted flood advice letter from the applicant is unsatisfactory and has not been prepared having regard for Council's Flood Policy 2020 and Associated Schedule of Flood Related Development Controls. In regard to this, Council's Development Engineer recommends that a deferred commencement condition be imposed requiring further consideration of the flood policy and related development controls (refer to deferred commencement condition in the draft set of conditions at the end of this report).

10. Development Contributions

Pursuant to Council's adopted 7.12 Contributions Plan, the proposed works trigger development contributions. A contribution of \$700 which is 1% of the development cost is required to be paid.

11. EP&A Regulations 2021

Applicable regulation considerations for compliance with the Building Code of Australia, PCA appointment and notice of commencement of works, sign on work sites, critical stage inspections and records of inspection will be covered under the recommended conditions of consent.

13. The likely impacts of the development

The proposed development seeks construction of a new telecommunications facility. The proposal does not include excessive earthworks in order to accommodate for the proposed tower, with conditions of consent to include appropriate measures to ensure that site stability is maintained during construction.

The proposal retains landscaping and fencing and is not considered to significantly impact upon any significant views. The proposed tower will not result in adverse solar impacts to the subject site or adjoining properties. Additionally, the proposal has been designed to minimise impacts on the aural and visual privacy of adjoining sites.

The proposed development will utilise existing infrastructure including electricity, sewer, and water.

While it is noted that the proposed telecommunication facility would exceed the maximum height controls, it is considered to be satisfactory from a height perspective and would provide much-needed telecommunications coverage across an area the Macdonald Valley.

The proposal is not considered to result in adverse economic and social impacts. In this regard, the proposed development can be supported subject to the imposition of appropriate conditions.

14. Suitability of the Site

The site is located in an C4 Environmental Living zone with the proposal being a permissible form of development with consent pursuant to the provisions of the T&I SEPP. The proposed development will promote greater reliability and coverage in terms of mobile coverage in the region, whilst maintaining the amenity of surrounding properties. The proposal will not alter the sites compliance with the relevant provisions of the DCP.

The site is not within an area recognised as being subject to landslip, flooding or bushfire, or any other particular hazards. The proposal will not increase the likelihood of such hazards occurring and is considered appropriate in this instance.

Accordingly, the site is suitable for the proposed development.

15. Public Consultation

In accordance with Council's Community Participation Plan 2019, the Development Application was required to be notified to adjoining properties. During this time, no submissions had been received in response to the proposal.

16. Public Interest

The proposed development has been considered to relate to the size, shape and context of the site and has been designed in accordance with the existing character of development in the area.

The proposal has been designed to minimise, as far as practicable, any adverse effects on neighbouring properties, with the development complying with the principal controls and/or objectives of the LEP and the DCP. Any non-compliances have been adequately justified. The proposal is not considered to result in adverse amenity impacts to the residents and public. Accordingly, the proposed development is considered to be in the public interest.

17. Conclusion

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The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

Having regard to the assessment of the proposal from a merit perspective, the development is considered to be appropriate for the site and in the public interest. It is considered that the proposal sufficiently minimises potential adverse impacts on the amenity of neighbouring properties. Hence the development is consistent with the aims of the relevant planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land. The proposal has demonstrated a satisfactory response to the objectives and controls of the applicable planning framework.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval subject to conditions of consent.

Attachments

AT - 1 S4.15 Assessment Report and recommended conditions of consent - (*Distributed under seperate cover*).

AT - 2 Plans used during assessment - (*Distributed under seperate cover*).

AT - 3 Clause 4.6 Variation

AT - 4 Flood Letter - (*Distributed under seperate cover*)

AT - 5 Statement of Environmental Effects - (*Distributed under seperate cover*)

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Attachment 3 – Clause 4.6 Variation



**Clause 4.6 Variation – 1341 St Albans Road, Central MacDonald
NSW 2775**

Proposed mobile telecommunications facility (monopole and associated antennas)

1. What is the name of the environmental planning instrument that applies to the land?

Hawkesbury Local Environmental Plan (LEP) 2012.

2. What is the zoning of the land and what are the objectives of the zone?

C4 – Environmental Living Zone Objectives:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To restrict development on land that is inappropriate for development because of its physical characteristics or bushfire risk.*
- *To ensure that land uses are compatible with existing infrastructure, services and facilities and with the environmental capabilities of the land.*
- *To encourage existing sustainable agricultural activities.*
- *To ensure that development does not create or contribute to rural land use conflicts.*
- *To promote the conservation and enhancement of local native vegetation, including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.*
- *To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.*

3. Identify the Development Standard to which this Clause 4.6 Variation applies?

Clause 4.3 Height of Buildings.

4. What are the objectives of the development standard?

Height of Buildings objectives:

- (a) *to protect privacy and the use of private open space in new development and on adjoining land,*
- (b) *to ensure that the bulk of development is not excessive and relates well to the local context,*
- (c) *to nominate heights that will provide a transition in built form and land use intensity,*
- (d) *to ensure an appropriate height transition between new buildings and heritage items.*

5. What is the numeric value of the development standard in the environmental planning instrument?

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 maximum height shown for the land at 1341 St Albans Road, Central MacDonald NSW 2775, is 10m.



6. How do the existing and proposed numeric values relate to the development standard? What is the percentage variation (between your proposal and the environmental planning instrument)?

Height of Building			
Current Height of Building (m)	HELP 2012 Height of Building (m)	Proposed Height of Building (m)	Percentage Variation
20m (Existing Facility)	10m	40m (Proposed Facility)	300% (30m exceedance)

Comments:

It is the inherent nature of a telecommunications facility that it be of a height that is above the area which it intends to service. As such, it is almost never the case that a telecommunications facility can adhere to Council building height limits.

It is often considered that a telecommunications facility is not specifically a 'building', rather a utility or provision of a service to the community. With this in mind, the percentage variation as noted above appears inappropriately skewed – when referenced against a standard building height. Notwithstanding, it is accepted that a non-compliance variation is to be submitted to Council.

7. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The court provided five tests that can be used as prompts to answer the above question. A number of these tests are highlighted below regarding this specific proposal at 1341 St Albans Road, Central MacDonald NSW 2775:

Test a: The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary

Commonly, the building height limit of an area is in place to ensure the scale and bulk of development is kept in line with the locality in which it is being proposed. This applies specifically to low density residential dwellings in a rural landscape in the Central MacDonald area. As an uncommon development type, mobile telecommunications facilities fall foul of height limits within almost every CBD, suburban, urban, regional, and rural environment. In this instance, the zoning of the subject land parcel is environmental living, and while the building height restriction would usually apply to any new low-density dwellings, it is difficult to define a telecommunications facility as a low-density residential dwelling in a rural landscape (i.e. environmental living) use. As such, it is considered that the height of buildings development standard is not relevant and is unnecessary.

Test b: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

It is the inherent nature of a telecommunications facility that they be of a height that is above the area which it intends to service. As such, it is almost never the case that a telecommunications facility can adhere to Council building height limits.

For a telecommunications facility to operate, it is necessary to have a height that allows the antennas to provide coverage services above and over the existing landforms and developments. As a single telecommunications facility is intended to service as wide an area as is possible, height is necessary to achieve this. Should a facility be only slightly higher than



surrounding elements in the environment, it will not provide service to a wide area, and numerous facilities will be required to service the area. Essentially, it is not feasible or practical to have a telecommunications facility that would adhere to the height limit as described in the Hawkesbury LEP 2012. The limit of 10m in the proposed site location would provide no services to the surrounding area, noting the existing facility (to be replaced) is already at 20m and is inadequate in delivering connectivity. Therefore, the much needed required proposed upgrade increases the structure height to 40m to adequately service the wider area. The additional height provided by this proposed structure on 1341 St Albans Road, Central MacDonald NSW 2775 ensures that Telstra's Network objectives can be met in the surrounding area, both now and into the future.

8. Are there sufficient environmental planning grounds to justify contravening the development standard?

It can be reasonably assumed that the Height of Buildings development standard has not been formulated with the intention of limiting the provision of mobile telecommunications services. Rather, its intent is outlined in the standards objectives, which relate primarily to building development. In this instance, the contravening of the Height of Buildings development standard is necessary to ensure the provision of vital, and often considered essential, services to the surrounding community.

The proposed telecommunications facility at 1341 St Albans Road, Central MacDonald NSW 2775, will form an integral part of the mobile telecommunications network in the greater Hawkesbury area. The new facility will deliver improved coverage and capacity to the Central MacDonald area. This deployment is part of the Federal Government initiative, Black Summer Bushfire Recovery Program, and ensures sufficient mobile coverage during a potential natural disaster, including bushfire and flood, while enabling connection into the surrounding existing and proposed network.

The proposed facility is considered appropriate for the subject site regarding environmental planning grounds for the following reasons (refer to the accompanying Statement of Environmental Effects (SEE) for more detailed information):

- The site currently hosts an existing small cell facility, including a 20m monopole (to be replaced);
- The facility is located specifically to provide reliable mobile phone service to the area surrounding the site, including the residential and business areas and adjoining road links;
- The use of a monopole with minimal bulk ensures that visual impact is significantly mitigated;
- The proposal is consistent with the relevant provisions of the Hawkesbury LEP and Development Control Plan (DCP) 2023, by siting the facility within a rural (i.e. environmental living) area, as outlined in the accompanying SEE;
- The facility will ensure the provision of improved mobile phone coverage and competition in the area;
- The site location is able to ensure that Telstra's network reconfiguration, which will assist in the implementation of future network growth can proceed efficiently;
- This deployment is part of the Federal Government initiative, Black Summer Bushfire Recovery Program, and ensures sufficient mobile coverage during a potential natural disaster, including bushfire and flood;
- Emissions from the proposed facility will be significantly below the Australian Radiation Protection and Nuclear Safety Agency standards adopted by the Australian Communications and Media Authority; and
- When viewed from surrounding roads and areas, it is not expected that the proposed facility will be seen as a negative visual addition in the locality due primarily to sightings of the proposed facility will be obscured by the existing vegetation and topography. Any visual impact of the proposed facility is further mitigated by the use of a monopole structure, providing a slimline structure that is far less visually obtrusive than the bulk of a lattice tower.



The proposed development, which provides a significant benefit to the public, could not proceed in any area due to the building height limits as noted by the Hawkesbury LEP 2012. The proposal is considered to be consistent with the broad intent of the Hawkesbury LEP 2012 and the Hawkesbury DCP 2023, as the proposed facility is sited in a location that is considered one of the most appropriate by Council's DCP.

It is therefore necessary to apply for this variation to the Height of buildings limit for the proposed mobile telecommunications facility.

9. Is the proposed development, despite the contravention to the development standard, in the public interest?

The proposed development is, in its entirety, in the public interest. It is indeed due to the specific need for this facility by the surrounding area – for continued and improved mobile telecommunications services to residents, businesses, motorists, and most importantly during natural disasters – that this proposal is a necessity and is therefore in the public interest.

This proposed new site, and the contravention of the development standard, is required for several reasons:

- Federal Government initiative, Black Summer Bushfire Recovery Program: The proposal ensures sufficient mobile coverage during a potential natural disaster, including bushfire and flood. Therefore, the proposal should be supported at this location for this reason. i.e. to provide connectivity during a bushfire/flood in the area.
- Network upgrade and reconfiguration: Telstra's network is becoming an outdated one, and as they look to expand and create greater competition in the telecommunications industry, they are upgrading their network across Australia. This upgrade includes adding new technology and equipment in locations that best fit into their existing and expanding network.
- Future 5G Network: the evolution of mobile telecommunications services is upon us, and the requirement for Telstra to provide 5G services to its customers is paramount. A new standalone facility is required for Telstra to be able to install its equipment effectively and efficiently on so that it can provide services now and into the future.
- Coverage expansion: As Telstra's customer base grows across Australia, new telecommunications facilities are required to service its growing (and changing) customer levels. Existing sites are at capacity or no longer provide the right services into the right areas. The proposed site will provide significant improvements in the Telstra network in the areas surrounding the site location.

Despite contravening the development standard, the proposed development is significant to the improved coverage that this proposed facility will provide into the surrounding area. There is also a high level of importance of this proposed site in the wider Telstra network, as it is imperative that this site is configured in a way that it will integrate effectively into the existing surrounding sites, and 5G network. The proposed mobile telecommunications facility, by virtue of the relatively small area of land required for the installation, will not be detrimental to the achievement of the C4 Environmental Living Zone objectives.

The proposed facility will provide a necessary service to the surrounding properties and wider area and will continue to provide the most up-to-date mobile telecommunications services to the surrounding residential and business uses.

The development will not increase the demand for public services, being an unmanned facility that does not require the service of water/sewerage.

It is considered that the proposed mobile telecommunications base station will not adversely impact the natural environment due to its relatively small footprint, and its setting within a rural (i.e. environmental living) precinct.

Commonly, the building height limit of an area is in place to ensure the scale and bulk of development is kept in line with the locality and landscape in which it is being proposed. As an



uncommon development type, mobile telecommunications facilities fall foul of height limits within almost every CBD, suburban, urban, regional, and rural environment. In this instance, the zoning of the subject land parcel is environmental living, and while the building height restriction would usually apply to any low-density dwelling developments in a rural landscape, it is difficult to define a telecommunications facility as a residential/rural dwelling use.

The proposed development, which provides a significant benefit to the public, could not proceed in any area due to the building height limits as noted by the Hawkesbury LEP 2012. It is therefore necessary to apply for this variation to the Height of Buildings development standard limit for the proposed mobile telecommunications facility.

10. Is there any other relevant information to be considered in order to justify varying the development standard?

Without a variation to the building height development standard, this proposed facility and its significant benefits to the public could not proceed. It is understood that the building height development standard does not necessarily consider every type of specific development. It is considered that by their inherent nature, telecommunications facilities must be well above the area they are required to provide coverage to, and as such in this instance, it is necessary and considered appropriate to vary the building height development standard



Hawkesbury Local Planning Panel Meeting

End of Business Paper

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