
BYRON SHIRE COUNCIL
STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**13.13**

Report No. 13.13 **PLANNING - Development Application 10.2018.233.1 Mobile Telecommunications Facility including 35 metre Monopole, Six (6) antennae and ancillary equipment at Wilsons Creek Road, Wilsons Creek**

Directorate: Sustainable Environment and Economy
Report Author: Greg Smith, Team Leader Planning Services
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File No: I2018/1564
Theme: Sustainable Environment and Economy
 Development and Certification

DA No: 10.2018.233.1

Proposal description: Mobile Phone Telecommunications Facility including 35 Metre High Monopole, Six (6) Antennae and Ancillary Equipment

Property description: LOT: 1 DP: 202997
 Wilsons Creek Road WILSONS CREEK

Parcel No/s: 99360

Applicant: Service Stream

Owner: Telstra Corporation Ltd

Zoning: 7(c) (Water Catchment Zone)

Date received: 16 May 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: 7/6/2018 to 12/7/2018
- Submissions received: 114 individual submissions, plus a petition indicated to contain 1304 signatures on pro forma letters
- Submissions are publically available from the following link:
www.byron.nsw.gov.au/Council/Council-meetings/Additional-Supporting-Information/

Delegation to determination: Council

Issues:

- Bush fire prone land
- High environmental value vegetation, Very high ecological values, Threatened species, populations and ecological communities, High Biodiversity Values on the Biodiversity Values Map under the Biodiversity Conservation Act 2016.
- Council cannot approve Part 4 development without a Biodiversity Development Assessment Report (BDAR).
- Flora and Fauna assessment report and Assessment of Significance not submitted.
- EME radiation impacts on wildlife.
- Building height under LEP 1988 clause 40, with SEPP 1 objection submitted (development standard is 9m, total height is 36.3m).
- Development not demonstrated to be appropriate to the location, surrounding development and environmental characteristics of the land. SEPP 1 objection not well founded and does not demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- Not consistent with objective (d) of the 7(c) (Water Catchment Zone).
- Conflicts with existing overhead 11kV powerlines, LV overhead powerlines and a 11kV / LV pole substation.
- Application not supported by a site plan identifying the closest residences contained in EME Report to determine the impact of the proposal on these dwellings.
- Application fails to address on-site sewage management.
- Public submissions (114 individual submissions, plus a petition indicated to contain 1304 signatures on pro forma letters).

Summary:

The DA proposes Mobile Phone Telecommunications Facility including 35 Metre High Monopole, Six (6) Antennae and Ancillary Equipment.

The proposal raised a significant level of objection from the community in terms of siting, environmental impacts, health and amenity impacts, electro magnetic radiation, visual impacts, proximity to power lines and surrounding residential properties.

It is considered that the development does not meet Councils planning controls or standards, having regards to the height provisions within Byron LEP 1988, and the objectives of the 7(c) Water Catchment Zone. Further having regards to the number of objections it is considered the proposed telecommunications tower is not in the public interest.

The application is recommended for refusal.

NOTE TO COUNCILLORS:



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 been called by the mover and seconder of all motions relating to this report.

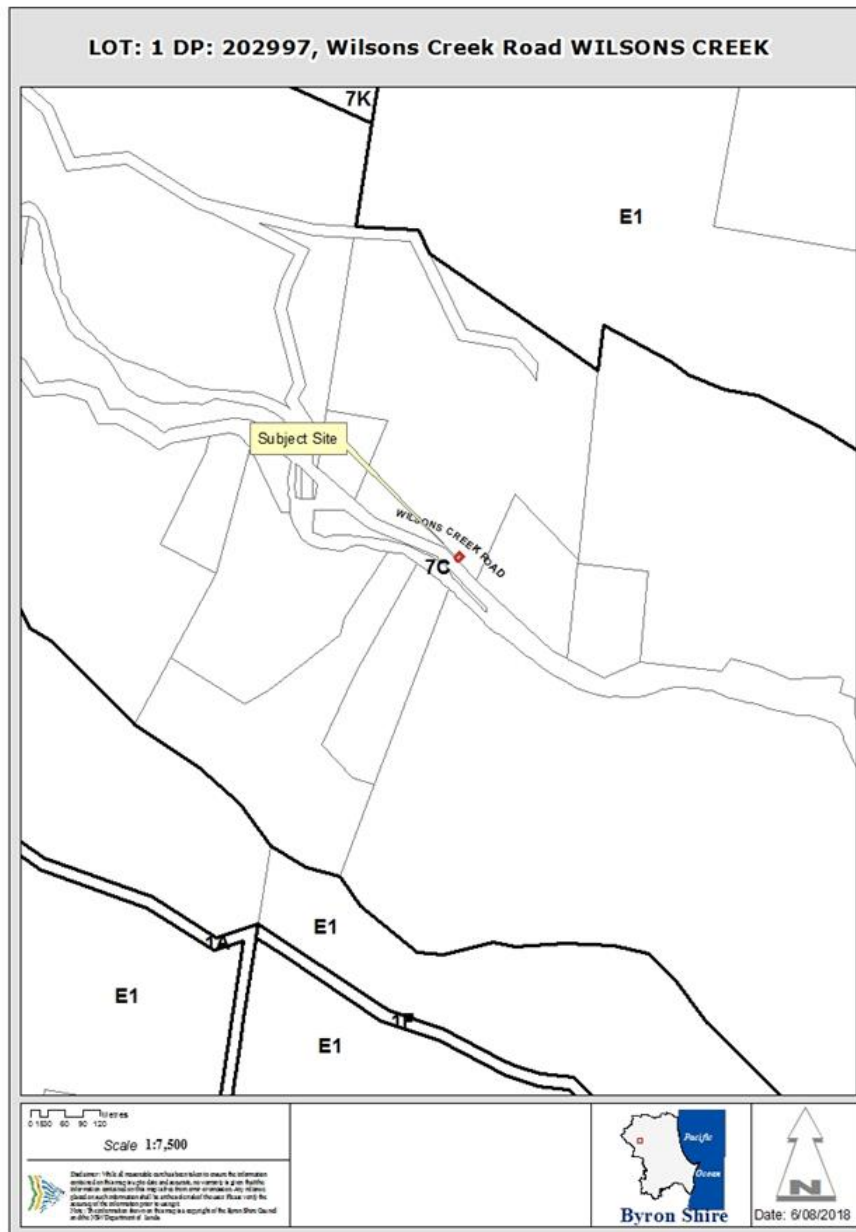
RECOMMENDATION:

That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application 10.2018.233.1 for Mobile Phone Telecommunications Facility including 35 metre high monopole, six (6) antennae and ancillary equipment, be refused for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development fails to comply with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007, having regards to its proximity existing overhead power lines.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with objective (d) of the 7(c) Water Catchment Zone as insufficient information has been provided to demonstrate that the use is appropriate in terms of conserving or enhancing the environmental amenity of the locality.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Cause 40 (Height) of Byron LEP 1988 and the SEPP 1 Objection has failed to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
4. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development fails to satisfactorily address the environmental impacts of the proposal including impacts on threatened species, populations and ecological communities, nor does it meet the requirements under the Biodiversity Conservation Act 2016.
5. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is considered unsuitable for the proposed development having regards to the ecological values of the site and its proximity to surrounding properties.
6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest having regards to the level of community objection to the telecommunication tower.

Attachments:

- 1 Proposed Plans, E2018/68630 
- 2 Confidential - further submissions dated 23/8/18, E2018/71816
- 3 Legal Advice received from objectors dated 23 August 2018, E2018/71820 



1. INTRODUCTION

1.1. History/Background

There is no approval history according to Council's records for this site.

1.2. Description of the proposed development

This application seeks approval for Mobile Phone Telecommunications Facility including 35 Metre High Monopole, Six (6) Antennae and Ancillary Equipment.

1.3. Description of the site

Land is legally described as	LOT: 1 DP: 202997
Property address is	Wilsons Creek Road WILSONS CREEK
Land is zoned:	7(c) (Water Catchment Zone)
Land area is:	132.8m ²
Property is constrained by:	Bush fire prone land, High environmental value vegetation

The site is owned by Telstra and accommodates an existing compound including an existing equipment shelter.



2. SUMMARY OF REFERRALS

Natural Resources Access Regulator

The NSW Natural Resources Access Regulator advises that a controlled activity approval may be required where any works are proposed on water front land as provided by Section 91 of the Water Management Act 2000.

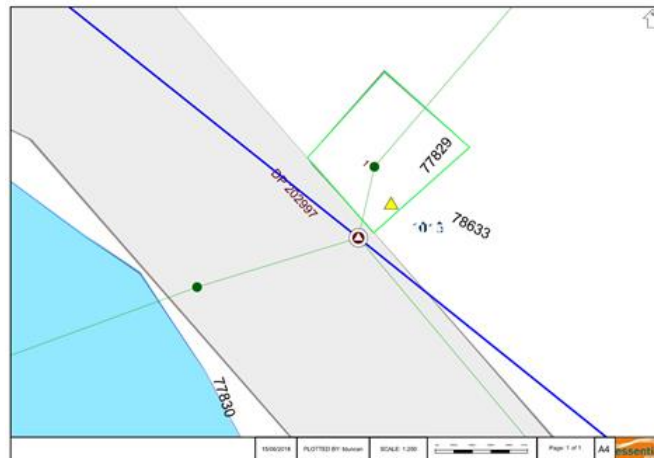
Rural Fire Service

The property is located in a Bushfire Prone Area. The proposal was referred to the NSW Rural Fire Service who raised no objection to the development. Conditions would apply should the application be approved.

Essential Energy

The proposal is located in close proximity to overhead power lines and was referred to Essential Energy who advised as follows:

Essential Energy notes that existing overhead 11kV powerlines, LV overhead powerlines and a 11kV / LV pole substation are impacted by the proposed development (approximate location shown on the attached Smallworld map). Essential Energy has safety concerns in relation to the proximity of the proposed development to its existing infrastructure.

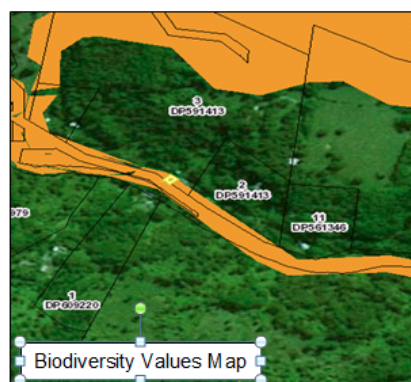
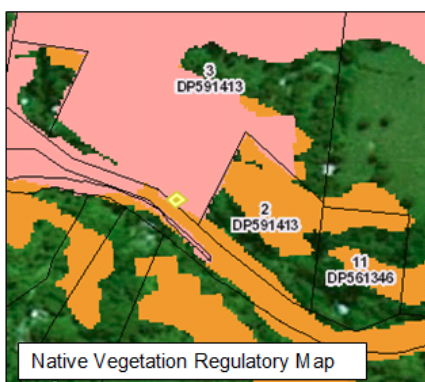


Any development in proximity to Essential Energy's electrical infrastructure should comply with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure.

Having regards to the above it is considered the proposals fails to satisfy Clause 45 of SEPP Infrastructure nor meets Essential Energy's requirements. The application does not address these requirements and is recommended for refusal.

Ecological Planner

The site is mapped as both Sensitive and Vulnerable Regulated Land on the Native Vegetation Regulatory map and the Biodiversity Values Map





The area surrounding the site is also mapped as HEV and threatened fauna habitat.

"The application states:

It is acknowledged that the area around Huonbrook and surrounds is generally high in natural vegetation, with Goonengerry National Park and Whian Whian State Conservation located nearby.

In light of this Telstra does not propose the disturbance of any natural vegetation, including tree removal associated with the establishment of this facility. All works will be carried out within Telstra's existing compound.

Based on the assessment above, the proposal will have minimal adverse impact on the local environment, including on populations of vulnerable species. Telstra do not consider the proposal to have a significant adverse environmental impact.

Despite this acknowledgement, no flora and fauna assessment has been provided with the application so it is not possible to adequately assess the ecological impacts. Such a report is required. In addition, recent survey work in Nightcap National Parks indicates adverse wildlife effects arising from mobile phone towers. In such a high environmental value area as proposed, these matters require adequate consideration".

The following matters are of importance

1. The location of the proposed phone tower is within an area of very high ecological values. The site is mapped as High Biodiversity Values on the Biodiversity Values Map under the Biodiversity Conservation Act 2016. Council cannot approve any Part 4 development without a Biodiversity Development Assessment Report (BDAR).
2. A Flora and Fauna assessment report is required which considers the Subject Site and the Study Area in accordance with OEH guidelines and assesses the likelihood of threatened species, populations and ecological communities on and in proximity to the site and provides Assessment of Significance to determine whether the impact is likely to be significant.
3. Given recent research findings on local wildlife effects at Mount Nardi (see link below) and other research undertaken overseas which appears to indicate adverse wildlife impacts arising from EME radiation. This has not been addressed <https://ehtrust.org/science/bees-butterflies-wildlife-research-electromagnetic-fields-environment/>

The application does not address the above matters and is recommended for refusal.

3. 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.

3.1 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: "The subject land is currently owned by Telstra and contains an existing Telstra Facility. The development does not result in an increased sensitivity of land use. No further investigation is considered to be necessary".		
State Environmental Planning Policy (Infrastructure) 2007	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Satisfactory	Unsatisfactory
Consideration: The proposed telecommunications facility is permitted with consent pursuant to clause 115 of the Infrastructure SEPP.		
However, the development application is not satisfactory having regard to clause 45 of State Environmental Planning Policy (Infrastructure) 2007 because, having regard to the advice provided by Essential Energy:		
(a) there are existing overhead 11kV powerlines, LV overhead powerlines and a 11kV / LV pole substation that are impacted by the proposed development; (b) there are safety concerns in relation to the proximity of the proposed development to its existing infrastructure; (c) the application fails to demonstrate that the development, which is in proximity to Essential Energy's electrical infrastructure, complies with the latest industry guideline currently known as <i>ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure</i> ; and (d) the application is not supported by plans certified by a suitability qualified person (showing distances from the proposed development to Essential Energy's existing infrastructure) together with any other relevant information for further consideration demonstrating that the proposed development complies with ISSC20.		
The application is recommended for refusal accordingly.		
<u>State Environmental Planning Policy (Rural Lands) 2008</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: There are no significant issues under the Rural Lands SEPP.		

4.2 Byron Local Environmental Plan 1988 (LEP 1988)

LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development.

The land is within the 7(c) Water Catchment Zone according to the map under LEP 1988. The proposed development is defined as a telecommunications facility under the Infrastructure SEPP as indicated above. The proposed development is permitted with consent in accordance with clause 115 of the Infrastructure SEPP. The proposed development is consistent (or not consistent) with the objectives of the 7(c) Zone for the following reasons:

Zone Objective	Consideration
(a) to prevent development within the catchment of existing or future water supply systems which would have a significant detrimental effect on the quality or quantity of the water supply	The proposed development is not of such a scale, intensity or water quality polluting potential that would have a significant impact on existing or future water supply systems, quality or quantity.
(b) to ensure that development maintains the rural character of the locality and minimises disturbances to the landscape through clearing, earthworks and access roads so as to avoid erosion	The proposed development will not have a significant impact upon the broader rural character of the locality, and minimises disturbances to the landscape through clearing, earthworks and access roads so as to avoid erosion.
(c) to ensure that development does not create unreasonable or uneconomic demands, or both, for provision or extension of public amenities or services	The proposal does not create unreasonable or uneconomic demands for provision or extension of public amenities or services, but instead adds to existing amenities and services.
(d) to enable the carrying out of appropriate uses on the land within the zone in a sound manner which conserves or enhances the environmental amenity of the locality	<p>The DA does not demonstrate that the proposal will be carried out in a sound manner to conserve / enhance the environmental amenity of the locality for the following reasons:</p> <ul style="list-style-type: none"> The location of the proposed phone tower is within an area of very high ecological values; The DA is not supported by a Biodiversity Development Assessment Report (BDAR); A Flora and Fauna assessment report is not submitted in support of the DA, assessing the likelihood of threatened species, populations and ecological communities on and in proximity to the site and providing an Assessment of Significance to determine whether the impact is likely to be significant; The DA does not demonstrate that there would not be significant adverse wildlife impacts arising from EME radiation; <p>The proposal is not consistent with the zone objective. The DA is recommended for refusal accordingly.</p>
(e) to ensure land uses which use pesticides and herbicides or other pollutants are kept to a minimum to maintain the quality of run off water	The proposed land use does not use pesticides, herbicides or other pollutants that are expected to have a significant impact on the quality of run off water, subject to appropriate erosion and sediment control measures being installed during construction.
(f) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem	The development is able to employ careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem as required.

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(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 which considered further as follows:

What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly
40. Height	The proposed development exceeds the 9m maximum vertical distance between the topmost part of the building and the existing ground level below requirement. A SEPP 1 objection in this regard is considered below.

Clause 40 – Height

Subclause 40(2) of LEP 1988 states that the council must not consent to the erection of any building on land within any zone other than Zone No. 3(a), if the vertical distance between the topmost part of the building and the existing ground level below exceeds 9m. The proposed building has an overall height of 36.3m. Accordingly, the development application does not meet the 55m front setback requirement and the DA is supported by an objection pursuant to SEPP 1.

The Land Environment Court judgment in *Wehbe v Pittwater Council* [2007] identified requirements needed in order to uphold a SEPP 1 objection, and these are addressed in the circumstances of this particular case as follows:

Is the requirement a development standard?

The 9m height requirement is a development standard as defined by 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 and standards are fixed in respect of the height of a building.

Is the objection in writing, is it an objection “that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case” and does it specify “the grounds of the objection”?

The Applicant submitted a written objection under SEPP 1 (refer to Doc #S2018/7774) dated 6/6/2018. It is an objection that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and specifies the grounds of the objection as follows:

“Compliance is Unnecessary

Clause 40 of the BLEP 1988 provides guidance on Development Standards on height for works within the LGA, particularly in relation to building height. While the proposal is located in an area under which the vertical distance between the topmost portion of a building and the ground level must not exceed 9 metres, the proposal does not consist of a building. The use of the term building within the BLEP 1988 relates to habitable structures within which a variety of uses are undertaken and equipment/machinery is housed. The Dictionary of the BLEP 1988 includes multiple uses of the word building which is consistent with the aforementioned statement. Furthermore the BLEP has no special provisions for telecommunication facilities. The proposed facility is considered as telecommunications infrastructure, and the monopole has a very minimal footprint and surface area. Based on this inconsistency Telstra consider the proposed facility as not constituting of a building as per the BLEP 1988. In this instance the only building is the existing equipment shelter which itself is already complies with the height requirement. Consequently the objective of Clause 40 of the BLEP 1988 is considered not relevant to the proposed development and in this case strict compliance is considered unnecessary.

Compliance Is Unreasonable

By their nature, telecommunications facilities are unable to comply with prescriptive height restrictions because, to function they must protrude above the surrounding area including topographical features, buildings and vegetation. Additionally this telecommunications pole is being proposed as part of the Federal Government's Mobile Black Spot Program. One of the key purposes of the MBSP is to improve the safety for people who live, work and travel in regional and remote areas. The ability for drivers, motorcyclists, cyclists and other road users to be able to call for help in the event of a breakdown, road accident or other emergency is critically important to the Federal Government. Currently, the only option available to people who require assistance in a mobile black spot is to flag down a passing motorist, send them to an area with adequate mobile phone coverage and trust that person to call for help. Extending beyond road safety, mobile phone coverage is important for providing an additional level of safety to tradespeople and farmers who sustain injuries while working in remote areas without access to a landline, such as a paddock or job site, or for people enjoying the natural beauty of an area by hiking or other outdoor activities which can all pose a risk of injury or getting lost. In these circumstances, mobile phone coverage enables communication with emergency services, as well as access to navigation tools and first aid information. As such Telstra considers this facility is as an important part of infrastructure in the area and its ability to function effectively is dependent on its protrusion above the surrounding environment. Additionally this telecommunications monopole is of a slimline nature and has been designed and will be finished in a manner that will not negatively affect surrounding development or the environmental characteristics of the land. As such compliance with the General Provision contained in Clause 40 of the BLEP would be unreasonable for a telecommunications facility”.

In addition, the SEPP 1 objection states that the development standard has been abandoned and provides planning justification for the variation as follows:

“The Development Standard has previously been abandoned

Within the Byron LGA there are 3 communications facilities zoned 7D Scenic Escarpment pursuant to the BLEP 1988, at St Helena Road, Mcleods Shoot NSW 2479. The first is a 40m NSW Police Force Lattice Tower at Lot 1 DP 441480, RFNSA site number 2479004. The second is an Axicom Lattice Tower also on Lot 1 DP 441480, RFNSA site number 2481001. The third is a 53m Telstra owned Lattice Tower plus 12m Extension on an unidentified lot that can be recognized as being within the road reserve of St Helena Road, RFNSA 2479002. These identified structures significantly penetrate the 9m Development Standard identified under Clause 40 of the BLEP 1988. They are considerably larger than the proposed facility (a 35m monopole) both in height and scale, however due to the nature of communications infrastructure their size is warranted and they form a part of important infrastructure.

Planning Justification pursuant the BLEP 1988

The proposal does not impede on the objectives of 7C Water Catchment zone particularly because it is a small footprint in an existing Telstra compound that has already been disturbed for the purposes of its establishment. The primary objective of the zone is to prevent development which negatively affects the environment through significant disturbance of the landscape leading to the damaging of existing or future water supply systems. The earthworks for the establishment of the new facility would be minimal and requiring no additional vegetation clearing. The proposal will form a reliable public service by improving communication and providing access to services that previously were available. This will not create any unreasonable demands to Council for the provision of public amenities. Furthermore the proposal does not impinge on the ability of any existing activities being carried out on the land or affect the

conservation of the natural environment. The proposal does not involve an activity that utilises herbicides or any other pollutants. As such the quality of run-off water will not be negatively affected. Telecommunications facilities by nature require minimal maintenance. In addition this facility will be maintained by measures that are likely not to be significantly detrimental to the native ecosystem. As such from a planning perspective it is Telstra's opinion that there are no grounds by which the proposal will break away from the objects of the zone.

The SEPP 1 objection concludes as follows:

"Conclusion"

Consequently with respect to the proposed DA the objective of General Provision 40 of the BLEP 1988 is considered not relevant to the proposed development and strict compliance is considered unnecessary and unreasonable.

Telstra consider there is clear justification for the facility to exceed the 9 metre building height restriction in this area based on the above discussion. Accordingly, we request that Council consider the proposal under Clause 6 of the SEPP1 (Development Standards) given:

- The proposed development is not considered a building as per the use of the term within the BLEP 1988. There is no reference to telecommunications facilities within this instrument and therefore this inconsistency renders the development standard unnecessary to the proposal. For telecommunications facilities, compliance with this height restriction is unreasonable.
- Telecommunications facilities provide an essential service in the case of emergencies and are considered a normal part of modern infrastructure and in order to function must extend above their existing environment therefore compliance is unreasonable.
- There are existing structures zoned under the BLEP 1988 that significantly exceed the 9m building height standard contained in Clause 40, that form part of important infrastructure within the LGA.
- As the proposal does not impinge on the objectives of the relevant zone there are sufficient environmental grounds to contravene the development standard".

It should be clarified that the proposed development is a "building" having regard to the applicable definition in section 1.4 of the Environmental Planning and Assessment Act 1979, which is:

building includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the [Local Government Act 1993](#).

Is "the objection well founded" and will "granting of consent to the development application be consistent with the aims of SEPP 1 as set out in clause 3"?

An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in one of a variety of ways (according to the above mentioned judgment). These are:

1. *Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable and unnecessary.*
5. *The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and compliance with the standard in that case would also be unreasonable or unnecessary.*

Clause 40 provides the following stated objectives.

- (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 that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

Objective (a) of the development standard is achieved for the following reasons:

- (a) The height of the proposed structure is necessary to achieve its intended purpose. Council has approved various telecommunications facilities in the Shire which exceed the 9m maximum requirement. The proposed building design exceeds the specified maximum height above the surrounding tree line so as to achieve its intended purpose to provide functional infrastructure.

However compliance with the development standard is not unreasonable nor unnecessary because compliance with objective (b) of the development standard is not achieved for the following reasons:

- (b) The application fails to demonstrate that the height and scale of the proposal are appropriate to the location, surrounding development and environmental characteristics of the land because
 - (i) it fails to demonstrate that it will not have significant impacts in terms of conservation and enhancement of the environmental amenity of the locality, threatened species, populations and ecological communities on and in proximity to the site and adverse wildlife impacts arising from EME radiation; and
 - (ii) it is not supported by a Biodiversity Development Assessment Report (BDAR), flora and fauna assessment report and Assessment of Significance to determine whether the impact is likely to be significant.

For these reasons the SEPP 1 objection is not well founded and the application is recommended for refusal.

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.

4.4 Byron Shire Development Control Plan 2010 (DCP 2010)

DCP 2010 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because its purpose is to provide planning strategies and controls for various types of development permissible in

accordance with LEP 1988.

Chapter 1 Part H Landscaping

A condition could be imposed on any consent requiring the provisions of appropriate landscaping.

Chapter 1 Part N Stormwater Management

Council's Development Engineers have recommended consent conditions in relation to stormwater management.

Chapter 21 Social Impact Assessment

The proposal is not considered to be one of the types of proposals listed in A5 which require the submission of a Social Impact Assessment with the development application.

The proposed development is considered to meet the relevant Objectives of DCP 2010 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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"/>
Consideration: Not applicable.		

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	No	N/A	N/A
93	No	N/A	N/A
94	No	N/A	N/A
94A	No	N/A	N/A

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"/>
Consideration: Not applicable.			

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	Yes. The application has failed to demonstrate that the proposal will not have significantly adverse impacts on the natural environment of the locality for the reasons given elsewhere in this Report, and the application is recommended for refusal accordingly.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	Having regards to the level of objection from the community to considered approval of the tower may have a negative social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

Are there any Council Policies that are applicable to the proposed development.

Council Policy	Consideration
Management of Contaminated Land Policy	The subject land is currently owned by Telstra and contains an existing Telstra Facility. The development does not result in an increased sensitivity of land use. No further investigation is considered to be necessary.
On-site Sewage Management Systems in Reticulated Sewer Area	Should the application be approved further detail would be required in relation to on-site sewage management.

4.9 The suitability of the site for the development

The application is supported by the following Site Selection analysis:

"3 Site Selection and Justification"

As part of Telstra's site acquisition procedure, a comprehensive site selection process has been undertaken in order to find an appropriate location for a new facility in Wilsons Creek. This included looking for 'colocation' opportunities, in accordance with Chapter 4 Part 3 Clause 4.13 of the Telecommunications Code of Practice 1997, as well as low impact solutions and new greenfield sites.

A number of disciplines are involved in the site selection process including site acquisition consultants, engineers and town planners, as well as specialist experts where needed, such as ecologists, geotechnical engineers and other relevant consultants. Each potential candidate is assessed under the following considerations:

Planning

- In accordance with the relevant Acts and Environmental Planning Instruments (EPI);
- Acceptability of the proposal by Byron Shire Council and community;

- Location in relation to sensitive land uses such as schools, child care centres, hospitals, nursing homes;
- Visual aspect and amenity;
- Compliance with the EME standards mandated by the Australian Communications and Media Authority (ACMA); and
- Opportunities to collocate facilities where possible.

Property

- Willingness by the owner to enter into a tenure agreement and provide access during construction and operation.

Engineering:

- Feasibility of construction (including assessment of soil conditions, slope and flood proneness) and availability of infrastructure such as access and power.

Radio frequency coverage and objectives:

- Ability to be linked to the existing Telstra network and meet the radio frequency coverage objectives for the area.

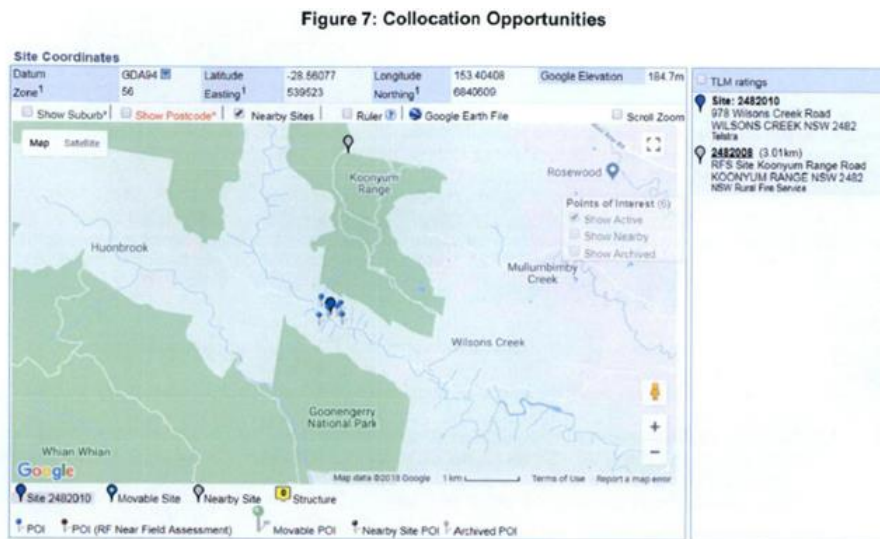
3.1 Options Considered

3.1.1 Opportunities to Collocate

State, Federal and Local government legislation encourages the use of existing telecommunication facilities for the collocation of new antennas to avoid the proliferation of telecommunication towers. Where possible, Telstra endeavour to co-locate on existing telecommunications facilities if these are available.

In this case, there were no existing telecommunications facilities nearby which were considered feasible for co-location.

In summary, a thorough examination of potential telecommunications base station sites in Huonbrook and the surrounding area has been undertaken. As depicted in Figure 7 below - there were no suitable options for co-location (for further information on the site, see www.rfnsa.com.au).



3.1.2 Low Impact Solutions

Where existing telecommunications facilities are not present, Telstra explore other potential co-location or 'co-siting' options such as radio towers, power stanchions or tall buildings.

Co-location options may not be available in all circumstances - there may be no existing vertical structures in the area, or no rooftops high enough to provide a feasible co-location option.

The site assessment process revealed no Low Impact options were available. In this case, Telstra concluded a new 'greenfield' facility is required.

3.1.3 Greenfield Sites

Given there were no viable opportunities to co-locate or co-site within the locality a number of Greenfield options were explored.

After initial site scoping it was evident the area provided a paucity of options given its remoteness and high natural vegetation value. As such a total of three (3) candidates were selected for in-depth investigation including an on-site inspection. Taking into consideration that the Huonbrook area has rural residential developments, the site investigation predominantly focused on isolated rural areas with very little development. Additionally, site investigations also focused on special requirements for the construction of such a facility as well as access for maintenance purposes and access to power and fibre.

Figure 8 and the Table 1 below identify the potential candidates explored and determine why they were discounted in lieu of the chosen location presented in this Development Application.

Figure 8: Potential Greenfield candidates (from Google Earth)



A summary analysis of each investigated candidate is set out on Table 1 below including a description of the opportunities and constraints that each site afforded:

Candidate	Site Details	Facility Type	Description
A Proposed Telstra Site	Telstra SCAX Wilsons Creek Road, Wilsons Creek 2482 Lot 1 / DP202997	35m monopole	<p>The subject site is a Telstra owned exchange within a cleared lot.</p> <p>The candidate was favourable for a variety of reasons as it achieves a suitable level of coverage with minimal impact on visual amenity albeit from directly adjacent to the facility. This site is also previously cleared therefore no disturbance of vegetation would be proposed.</p> <p>From a technical perspective this site achieves desired levels of network coverage. The site was also considered favourable from a cost and build feasibility perspective given availability of power and access.</p> <p>The site was selected on this basis.</p>
B	80 Hoonbrook Road, Hoonbrook 2482 Lot 1 / DP601329	35m monopole	<p>Telstra investigated a new tower within this privately owned rural residential property.</p> <p>The candidate was favourable as it achieves a suitable level of coverage with minimal impact on visual amenity as the site is well screened by the existing trees. This site was also favourable from a planning perspective as the proposed location of the facility is zoned RU2 Rural Landscape. As such provisions of the ISEPP 2007 would prevail enabling Complying/Exempt development.</p> <p>However Telstra's attempts to secure tenure were unsuccessful as the site acquisition negotiations failed.</p>

C	153 Hoonbrook Road, Hoonbrook 2482 Lot 3 / DP611091	35m monopole	<p>Telstra investigated a new tower on privately owned land.</p> <p>The candidate was favourable as it also achieves a suitable level of coverage with very minimal impact on visual amenity as the site is well screened by the existing trees. This site was also favourable from a planning perspective as the proposed location of the facility is zoned RU2 Rural Landscape. As such provisions of the ISEPP 2007 would prevail enabling Complying/Exempt development.</p> <p>However this site was discounted from a cost and build feasibility perspective for a number of reasons. These included the difficult terrain and access issues increased by the thick vegetation which would require some clearing for the establishment of the facility. From an environmental perspective this candidate would result in much more significant impact.</p> <p>In addition to the above, the site was rejected as all attempts to reach the landowner failed.</p>
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3.2 Preferred Option

The site selection process highlighted the following about the proposed site:

- it is considered to be consistent with the environmental and planning requirements, and it is expected to have minimal environmental impacts during construction and operation;

- it will meet the radio frequency objectives of Telstra's network, giving the required coverage within the area by allowing all three sectors to operate effectively.

Potential greenfield sites were ruled out either because of environmental and planning issues, tenure grounds or difficulty of design and construction.

In conclusion, Telstra has identified that Candidate A is the most appropriate location for the installation of a new facility - therefore, on behalf of Telstra, we submit this application for a new telecommunications facility to Byron Shire Council".

However the application fails to demonstrate that the site is suitable for the proposed development for all of the reasons outlined in this Report and is recommended for refusal accordingly.

4.10 Submissions made in accordance with this Act or the regulations

Public submissions are available from www.byron.nsw.gov.au/Council/Council-meetings/Additional-Supporting-Information/

The development application was publicly exhibited. 114 individual submissions have been received, most of which are based on two pro forma type letters. A petition of pro forma type letters has also been submitted, the cover letter of which advises in part as follows:

"This petition letter (copy below) has been signed by 1304 people, 316 from Wilsons Creek itself, 851 Byron Shire and 137 out side Byron Shire, this a clear indication the proposed Telstra tower does not have public support and is against the clearly expressed will of the people. The sole purpose of government is to act and administer services in accordance with the will of the people, ..."

No submissions have been submitted in favour of the proposal. Issues raised in the submissions are summarised as follows:

Ecological Impacts, Impacts of EME / EMR on wildlife, Impacts on wildlife in environmentally sensitive area, No species impact statement submitted, Height

Comment: The application is recommended for refusal in relation to significant impacts in terms of conservation and enhancement of the environmental amenity of the locality, threatened species, populations and ecological communities on and in proximity to the site and adverse wildlife impacts arising from EME radiation. The application is not supported by a Biodiversity Development Assessment Report (BDAR), flora and fauna assessment report and Assessment of Significance to determine whether the impact is likely to be significant. The application fails to demonstrate that the height and scale of the proposal, which exceeds the maximum height development standard under clause 40 of Byron Local Environmental Plan 1988, are appropriate to the location, surrounding development and environmental characteristics of the land in accordance with objective (b) of the height development standard. The application is not supported by a well founded SEPP 1 objection demonstrating that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case.

Impacts of EME / EMR on humans, Health risks, Links to cancer, Inevitable co-location of additional telecommunication services will lead to increased radiation levels, Exposure may constitute assault or trespass under Common Law, Cumulative impact of 5G on all power poles and on all houses, Proximity to dwellings, 70m from nearest dwelling

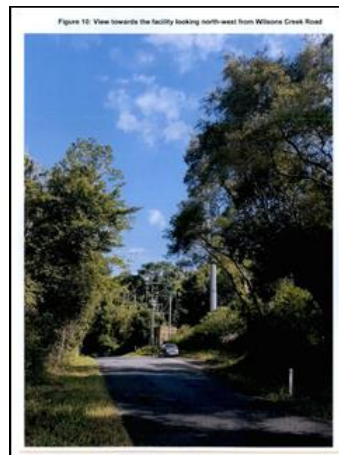
Comment: The application is not supported by a site plan identifying the closest residences contained in EME Report to determine the impact of the proposal on these dwellings, and is recommended for refusal accordingly.

Residents chose to live in an area without mobile phone reception

Comment: This is not a matter of such significance as to warrant inclusion in the recommended reasons for refusal.

Visual impacts, Loss of scenic and visual amenity, existing trees are not 35m high to screen the tower

Comment: The telecommunications facility at the proposed location would be less visual than one at the top of a ridgeline or escarpment. The proposed telecommunications facility would not be as visible when viewed along the Wilsons Creek Road approaches beyond an estimated 150-200m to the east and west of the site given the presence of vegetation, other than intermittent glimpses. The telecommunications facility would not be excessively visible from the public perspective other than in front of the site. The telecommunications facility is expected to be visible from other properties nearby.



However these matters are not considered to be of such significance as to warrant inclusion in the list of reasons for refusal, also having regard to the number of other more visually prominent telecommunication facilities throughout the Shire.

Impact on land saleability

Comment: This is not a matter for Councils consideration.

Flood impacts, Soil stability, Landslips, Adjacent to sink hole, No geotechnical assessment lodged with application, No evidence that structure will be on bedrock

Comment: The site is not flood prone land. Council's Development Engineer advised that the proposal is satisfactory having regard to geotechnical hazards. The Development Engineer recommends a condition requiring a certificate from a professional Engineer experienced in Geotechnical Science to be provided to the Principal Certifying Authority, certifying that the site is stable and will not be affected by landslide or subsidence at, above or below the site when the building is erected. The certificate must be prepared in accordance with AS 1726.

Prohibited development in the zoning

Comment: It is not the 7(c) Zone under Byron Local Environmental Plan 1988 which permits the proposed development. The proposed telecommunications facility is permitted with consent in accordance with clause 115 of the Infrastructure SEPP, which states:

115 Development permitted with consent

(1) Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land.

Fire plan not provided to deal with electrical faults and lightning strikes

Comment: If necessary, this could be required by way of a condition of consent.

No indication of public liability insurance, Many insurers now have policy exclusions for damage or injury due to EME, it is unlikely Telstra or Council are properly covered for this substantial risk

Comment: Public liability insurance is not a matter for consideration in the assessment of this application, but is rather a matter for the entities mentioned to negotiate with their respective insurers.

Potential contamination of the site, presence of asbestos, lead and industrial chemicals

Comment: The subject land is currently owned by Telstra and contains an existing Telstra Facility. The development does not result in an increased sensitivity of land use. No further investigation is considered to be necessary in relation to contamination.

No indigenous heritage assessment has been submitted in support of the application, adequacy of AHIMS search

Comment: The standard procedure in relation to Aboriginal heritage is to conduct an AHIMS search. If this identifies anything in the vicinity of the site then the assessment progresses to a more detailed assessment. A condition could be imposed on the consent if granted, along the lines of the following:

Aboriginal heritage – unexpected finds protocol

If Aboriginal objects are uncovered during earthworks or disturbance; work in the immediate area of the unexpected finds must stop immediately and the North Coast Regional Operations Branch of the OEH and the Registered Aboriginal Parties are to be consulted before work can re-commence.

Note. OEH means the New South Wales Office of Environment & Heritage, and Registered Aboriginal Parties is defined in the National Parks and Wildlife Regulation 2009.

Impact on local power grid


Comment: Essential Energy raised concerns in relation to the location of the proposed telecommunications facility in relation to poles and wires, but not in relation to the capacity of the network to accommodate the proposed power usage

Manly Council was successful in stopping a tower in Balgowlah

Comment: This application in Manly Council has not been reviewed, the circumstances of the subject Wilsons Creek proposal are what is relevant.

Estimated cost is actually \$870,000

Comment: The Applicant submitted a cost estimate as follows:

 	
Development Cost Estimate: Wilsons Creek Telecommunications Facility	
Development Cost between \$100,000 and \$3,000,000	
Our Reference:	Huonbrook
Date:	23/07/2018
Development Application No:	DA10.2018.233.1
Construction Certificate No:	NA
Applicant's Name:	Service Stream Network Construction
Applicant's Address:	11, 29 Christie Street, St Leonards, NSW 2065
Development Name:	Mobile Telecommunications Facility
Development Address:	Lot 1 DP 202997 Wilsons Creek Road, Wilsons Creek
Estimated Cost of Works:	
Site Establishment	\$10,000
Structure - Pole	\$55,000
Civil Works – Footings & related works	\$45,000
Civil Works – Driveway & related works	\$25,000
Electrical Works	\$35,000
Equipment Installation Works	\$30,000
Ancillary Install & Plant Hire Services	\$35,000
Sub-Total	\$235,000
GST	\$23,500
TOTAL DEVELOPMENT COST	\$258,500

Motorists on mobile phones will be an additional traffic hazard on already dangerous roads

Comment: The use of mobile phones whilst driving is governed by road rules and laws, and this consideration is beyond the scope of assessment of this application.

The proposal would not be in the public interest

Comment: For the refusal reasons given below, approval of the development application would not be in the public interest.

Inadequate public consultation by Telstra

Comment: Council does not set standards in relation to public consultation by Telstra. The application was publicly exhibited, advertised and notified by Council in accordance with Development Control Plan requirements with the period of exhibition exceeding the minimum requirement under the DCP.

Poor location in bottom of valley, so more towers will be required

Comment: Noted

4.11 Public interest

Having regards to the level of objection by the community it is apparent there is little support for the development which would serve that community. As such it is considered the proposal is not in the public interest.

5. DEVELOPER CONTRIBUTIONS

Section 7.11 Contributions would be payable should the application be approved.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Provide Disclosure Statement register details here: Not applicable

7. CONCLUSION

The proposed Mobile Phone Telecommunications Facility has generated significant opposition from the local community, whilst the application lacks detail in addressing environmental and amenity issues pertaining to the site and the surrounding locality.

The development application is recommended for refusal for the reasons provided in the Recommendation of this Report.