



# **Ordinary Meeting of Council**

**14 June 2023**

**UNDER SEPARATE COVER  
ATTACHMENTS**

**ITEM 9.1**

**ADDITIONAL ATTACHMENT**

13<sup>th</sup> February 2023

Assessing Officer  
Queanbeyan-Palerang Regional Council  
PO BOX 90  
Queanbeyan. NSW 2620

By email: [council@qprc.nsw.gov.au](mailto:council@qprc.nsw.gov.au)

Attention: [REDACTED]

**Objection to Development Modification DA 2021.1628.A – Telecommunications and communication facility- 34 Powell Drive Carwoola**

I strongly object to the Modified Development DA2021.1628.A.

The development application DA2021.1628.A as advertised **should be rejected by Council**, and further, consent for the development revoked under the EP&A Act.

The serious implications of any one of the issues outlined below should be sufficient cause, let alone the cumulative impact of all of the major departures from DA 2021.1628, (and the disregard for legislative requirements and guidelines) associated with this development, when considered and assessed holistically.

YLESS4U is a private company who is seeking to run a commercial activity on land at 34 Powell Drive Carwoola, zoned for its Conservation value (C4), which is a prohibited land use under the QPRC local Environmental Planning Policy. We note that in addition to a very substantial publicly-funded grant provided by the NSW Government to Yless4U, Yless4U also stand to benefit from subscriptions from a potential increased user base (at a user subscription fee of approximately \$80 per month per household according to the Developer's website), for the use of the Yless4U service. The landowner also receives payment for the use of the land and free internet services.

State environmental planning policies generally take precedence over a Local Environmental Planning Policy. Yless4U (and Council) are applying State Environmental Planning Policy (SEPP)- Transport and Infrastructure – 2021, to the construction of the development (DA.2021.1628.A).

While clause 2.143 (1) of that SEPP allows such a development with the consent of the consent authority (Council), clause 2.143(2) of the Policy requires that Council take into consideration any guidelines issued by the Planning Secretary concerning site selection, design, construction or operating principles for telecommunication facilities, including the *NSW Telecommunications Facilities Guideline Including Broadband*, for the development of the tower at 34 Powell Drive, Carwoola (and others).

In the circumstances where the SEPP does allow development with development consent, a person must not carry development out on the land unless the development is **carried out in accordance with the consent AND the instrument** (Section 4.2(b) of the EP&A Act); the instrument being the SEPP and its associated guidelines.

The development as constructed **neither complies with the consent conditions, nor the requirements of the relevant SEPP and guidelines**. Council has also made numerous pre-approval assumptions in relation to SEPP requirements and guidelines based on information provided by the Developer. These pre-approval assumptions evaluated against the post-approval modifications undertaken by the Developer (which are significant), now make **Council SEPP assessments, no longer valid**. We can see no grounds upon which it could be argued that the constructed structure is either substantially the same development, or that it even remotely resembles the development presented to the Community or Council for approval.

Additionally, the new modified DA.2021.1628.A only addresses the issue of the incorrect location (as represented by a qualified surveyor), of the already constructed development. We note that we received written and verbal assurances in relation to the distance from our boundaries from Council staff prior to the original DA being approved. While the location has been one of the main contentious issues throughout the approval process (due to the exacerbated impacts of a closer proximity to adjoining residents), this is only one of many such departures from the original DA.2021.1628

This begs the question – if the location as documented by a qualified surveyor is incorrect, what else about this development is incorrect?

Development Modification Application 2021.1628.A must be rejected by Council on the grounds that:

- The content included in the Yless4U pre-lodgement application PAN-284849 is **inaccurate** as follows:
  - The “Type of Modification” (and the other non-compliances) are **not minor** for the purposes of section 4.55(1) of the EP&A.

The modifications that have already been made (including the incorrect location), that differ from the consent conditions, are **significant modifications**. They have major implications for public health and safety, visual impact, significant panoramas and vistas, the character of the area, the environment, and the amenity of surrounding properties.

- The “Description of the Development” **is incorrect**.

The development as constructed is not a *12m high telecommunications pole, roadside cabinet and small solar array* [The Commonwealth Telecommunications Act 1997, (which takes precedence) provides a definition for the “height of a tower or facility” being the *distance between the top of the tower or facility and ground level* (a *tower* meaning a tower, pole or mast)]. The tower, pole, or mast, however described, at 814 ADH is taller than the 12m in height specified and approved by Council (and communicated to residents).

There is also no road-side cabinet/battery box or solar array, the structure has been connected to mains electricity which has implications for **Bushfire Safety** (and for any bushfire management plan prepared - the original report now being invalid), earthworks (**extensive unapproved earthworks** over a distance of over 200m were undertaken), **land degradation**, erosion, and watercourses.

- The development will likely significantly impact **threatened species** and their habitat due its location in a **critical biolink** for habitat connectivity between the Cuumbeun, Wanna Wanna and Stoney Creek Reserves (scientific references have already been provided to Council).
- As declared on 25 May 2022 the Applicant does have **a significant relationship** with a QPRC senior planning staff member who hosts a tower on their property and receives both cash and non-cash benefits (in the form of free internet service) amounting in total to a value in excess of QPRC's donations/gift threshold of **\$1,000 per annum**.
- The applicant and a QPRC staff member – who had an undeclared pecuniary conflict of interest were in **regular email contact** throughout the original assessment period. The extent of the relationship can be evidenced further by documents obtained through the Government Information Public Access (GIPA) process, should this be required by Council.
- Concurrence from another agency may be required as threatened species (which exist in the area - evidenced by ourselves, recent Landcare assessments and biodiversity studies), are a **Matter of National Significance**.
- The Statement of Environmental Effects (Industrial Development) submitted by the Applicant is **inappropriate for a C4 zoned development** as was brought to the attention of the Applicant by QPRC planning staff (GIPA).

“Residential” is the **principle designated land use** for the C4 development site. The residential SEE (which includes alterations additions and outbuildings) addresses fit for locality, overshadow, privacy, excavation, erosion, habitat and bushfire etc. which have not been adequately addressed in the industrial SEE.

- The Yless4U Planning Pathway document is an inaccurate representation of what has been constructed:
  - The facility is not “low-impact”, either on the environment or otherwise, given that it is constructed in an area that is *protected from significant environmental disturbance* (i.e. zoned as C4 - **Terrestrial Biodiversity**- on an identified critical biolink) - refer C’wlth Telecommunications ( Low-impact Facilities) Determination 1997
  - The ground around the development site was significantly disturbed through major unapproved earthworks over an estimated 228 metres (imagery evidencing this can be provided on request). The total square meterage disturbance, including at the construction site and for electricity mains installation, appears to exceed the thresholds that initiate *Managing Urban stormwater: Soils and construction – Volume 1 (Landcom 2004)*. From the GIPA documents provided we could not locate any evidence that the appropriate documents had been prepared by the applicant, or any evidence that the impact of the development on soils and water were given due consideration.
  - The tower as constructed does not resemble the QPRC stamped plans for the original development.

- In addition to the above, there are still numerous other non-compliances for the original Development Application, that are not included in this DA Modification application. We have been advised by QPRC and the Private Certifier that they are still being resolved. These include:
  1. This DA 2021.1628.A and the previous DA 2021.1628 fail to adequately address the SEPP requirements. As is evident from the GIPA documents provided to us, this was brought to the attention of the Developer by members QPRC Town Planning staff, and raised by an independent Town Planner in the assessment process of DA.2021.1628. However, this was somehow disregarded in the making of the final decision recommending approval (refer Principles 1-5 NSW Telecommunication Guidelines). Evidence (obtained through the GIPA process) of the extent of the consideration of these principles can be provided on request.
  2. DA 2021.1628.A, as was the case with DA.2021.1628 disregards the visual impact on surrounding residents' premises (including the exacerbated impacts due to its incorrect location), and the community. These are mandatory considerations under the NSW Telecommunication Guideline, most particularly Principle 1 that addresses design and siting to **minimize visual impact, visual clutter, and obstruction of vista or panorama, whether viewed from public or private land**. The close proximity of the tower was raised with both the Mayor and with the QPRC Town Planning staff during a site visit in 2022. Town Planning staff stated that the tower would be 102m from the boundary as a development condition of consent to minimise the visual impact, and that the tower would not be seen from roads. The constructed development is **89m from the boundary** (not the 102m specified) and **can be seen from roads** in the vicinity, **contrary to the QPRC original DA assessment and approval**.
  3. The **structure penetrates the obstacle limitation surface (OLS) for the Canberra Airport**. The Department of Infrastructure, Transport, Regional Development, Communications and the Arts has advised that approval for 807m ADH was revised to 812m ADH, however, the actual height of the tower at 814m ADH, makes it non-compliant with Air Safety /Canberra airport specifications of 812m ADH.
  4. The facility was to be a point-to-point microwave laser internet connection (supporting documentation can be provided on request). The constructed tower is now a Telecommunication hub with multiple antennas (9 in total) and varying frequencies up to as high as 82 GHz, having implications for visual bulk and electro-magnetic emissions (EME).
  5. The tower and the associated EME are now totally different to the information flyer distributed to the Community regarding the installation. The flyer states that there is *no radiation outside 1 metre of the physical dish*, and represents that *sites run on solar use (like the one approved by Council) use less power than your WiFi router that you have in your house*, and that *most of the technology on the tower uses the same frequencies as your have in your WiFi router*. Through the GIPA we have learned that the developer wanted to have Councillors visit another YLESS4U site to show the impact of the proposed development, the site which was been proposed as an example was in fact a point-to-point facility with

a solar panel – not a mains powered telecommunication hub. The above are misrepresentations of the tower constructed at 34 Powell Drive which is now connected to mains electricity, and has nine antennas at multiple frequencies up to **82 GHZ**.

Safe EME exposure is a factor of height, distance, power and frequency outputs, and periods of exposure - it is a cumulative calculation. We also note that:

“Compliance of mobile or portable transmitting equipment (100 kHz to 300 GHz)..... Measurements or computations to prove compliance with this Standard must be made by **an appropriately qualified and experienced person or organisation (testing authority)** in accordance with relevant AS/NZS, IEC or IEEE standards”.

The facility also does not have a EME certificate, which is of particular importance as it is surrounded by, and is now closer to, residential development.

6. The facility does not comply with the Bush Fire Strategy included as a condition of consent for the original DA.

We also note the site recommendations, that were a stipulation for RFS approval, specify site management in perpetuity. We could not locate in the GIPA documents provided, such an agreement with the applicant for management of the site that incorporate the requisite approvals for vegetation clearing for “new” telecommunications infrastructure under the SEPP (Biodiversity and Conservation) 2021. There is no guarantee that this responsibility will be assumed by the landowner, as the property is currently listed for sale.

The modifications to the tower as constructed makes the bushfire report prepared for the original DA no longer valid as it was based on a solar powered tower (not one connected to mains electricity), and a different location. Also, the report does not take into account risk factors that might add to the bushfire risk at the development site (like electricity fault, or lightning strikes), and is there no consideration of the environmental sensitivity of the site on a critical biolink.

7. The facility does not have an occupancy certificate, and yet has been operational since July 2022.

This particular development has many people questioning:

- ***Is QPRC’s attitude towards YLESS4U and this development one of “if relates to NSW Governments Connecting Country Communities Grant Program.... build whatever you like, wherever you like, and seek approval afterwards”? – as there are numerous other YLESS4U towers already built on Conservation Zoned lands despite there being ample rural zoned hills in the QPRC LGA.***
- ***Does this DA process represent a particularly unique relationship between YLESS4U and the QPRC?***
- ***Can this relationship be explained by conflicts within Council or the push of a political agenda?***

Without the proper and effective development application process being followed by responsible Council, public and environmental safety is at risk. Towers installed at

inappropriate locations and contrary to legislative requirements and guidelines can impact bush risk, the risks from EME, air safety, not to mention risks to the environment, threatened species and to the conservation and rehabilitation of biolinks. These important matters cannot be given secondary consideration to corporate profit and political agenda.

As stated in QPRC's own planning guidance "*Each application must be treated on its individual merits in relation to the general principles and the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.*" This does not appear to have happened with this development at 34 Powell Drive, Carwoola.

If Council is to truly serve the **Public Interest**, it should provide the necessary oversight to ensure the appropriate application of publicly-funded grant money at a more suitable site (some sites we have provided line of sight analysis for, have better coverage of Carwoola), that satisfies the legislative requirements, the SEPPs, LEPs, DCPS and other guidelines, and has less of an impact on the natural, built (existing residences), social and economic environment ....now and into the future.

**Council must reject D.A 2021.1628.A**

Yours sincerely

