



# **Ordinary Meeting of Council**

**14 June 2023**

**UNDER SEPARATE COVER  
ATTACHMENTS**

**ITEM 9.1**

**QUEANBEYAN-PALERANG REGIONAL COUNCIL  
ORDINARY MEETING OF COUNCIL**

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Item 9.1	Modification to Development Application DA.2021.1628 - Telecommunications Facility - 34 Powell Drive, Carwoola
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# **QUEANBEYAN-PALERANG REGIONAL COUNCIL**

## **Council Meeting Attachment**

**14 JUNE 2023**

ITEM 9.1            MODIFICATION TO DEVELOPMENT APPLICATION  
                         DA.2021.1628 - TELECOMMUNICATIONS FACILITY - 34  
                         POWELL DRIVE, CARWOOLA

ATTACHMENT 1    SECTION 4.15 & SECTION 4.55 ASSESSMENT REPORT



## Section 4.55(1A) – Assessment Report - DA.2021.1628.A

### SUMMARY

<b>Proposal:</b>	Installation of telecommunications tower; modification: modify site plan to reflect location of tower as constructed
<b>Address:</b>	34 Powell Drive CARWOOLA NSW 2620
<b>Property description:</b>	Lot 33 DP 774571
<b>Applicant:</b>	Jason Green
<b>Owner:</b>	Brian Stanley Helmers, Tanya Ann Jefferis, Lesley Eileen Helmers
<b>Date of lodgement:</b>	13/12/2022
<b>Notification period:</b>	03/02/2023 to 24/02/2023
<b>Submissions received:</b>	Eleven (11)
<b>Assessment officer:</b>	Wesley Folitarik (Consultant Planner)
<b>Estimated cost of works:</b>	\$ 20,000 (no change from DA.2021.1628 cost of works)
<b>Zoning:</b>	C4 Environmental Living
<b>Heritage:</b>	No
<b>Flood affected:</b>	No
<b>Bushfire prone:</b>	Yes
<b>Recommendation of officer:</b>	Approval, subject to conditions

### EXECUTIVE SUMMARY

This modification DA.2021.1628.A proposes modifications to the approved telecommunications tower consisting of the telecommunications pole, cabinet and removal of a solar array. The modification proposes to amend the location and setbacks of the approved telecommunications tower to correct the setbacks shown in the DA.2021.1628 site survey and reflect the location of the communications tower as constructed.

The modification application was initially notified from the 16 December 2022 to the 23 January 2023 and was re-notified from 3 February 2023 to 24 February 2023 to provide original submitters additional time to make a further submission. A total of eleven (11) submission were received, two in support and nine objecting to the proposed modification.

The issues raised related to inconsistencies between the approved communications tower and its constructed location, the maximum approved height of the tower as well as adverse impacts on amenity through impacts on the natural views.

Approval is recommended subject to conditions.



## BACKGROUND

DA.2021.1628 was lodged on 27 October 2021 and received eight (8) submissions.

Council, at its meeting of 25 May 2022 approved the development application subject to conditions.

Following construction of the telecommunications tower it was discovered that due to differences between the dimensions on the approved plans and the site survey used that the telecommunications tower has been constructed in a location not in accordance with the approved plans.

This modification is considered necessary in order to correct the approved plans to reflect the actual location of the tower structure as constructed.

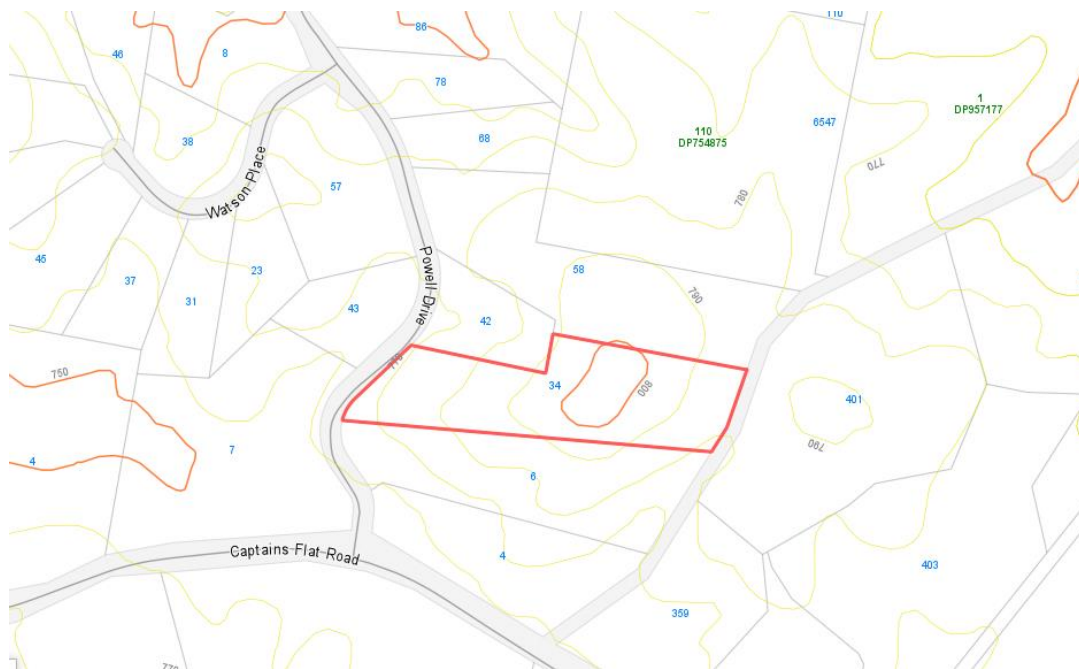
## DESCRIPTION OF THE SITE AND LOCALITY

The subject site is legally described as Lot 33 DP 774571 and is commonly known as 34 Powell Drive, Carwoola. The site is located on the eastern side of Powell Drive and has an area of 6.5ha.

The site is an irregular shape with an angled frontage to Powell Drive and a stepped increase in width at the rear. The site has undulations across the site with a high point at the rear portion of the site.

Existing development on the site comprises detached dwelling house with a detached garage, sheds and an inground swimming pool. Vehicular access is provided to the site via an existing driveway from Powell Drive.

Existing development within the locality consists of detached rural dwelling houses with ancillary sheds/outbuildings.



**Figure 1: Locality plan with contours (Source: QPRC Online Mapping Intramaps)**



**Figure 2: A view looking west towards Powell Drive from adjacent to the telecommunications tower**



**Figure 3: A view looking north towards the adjoining property at 58 Powell Drive from adjacent to the telecommunications tower**



**Figure 4: view of vegetation near the constructed roadside cabinet**

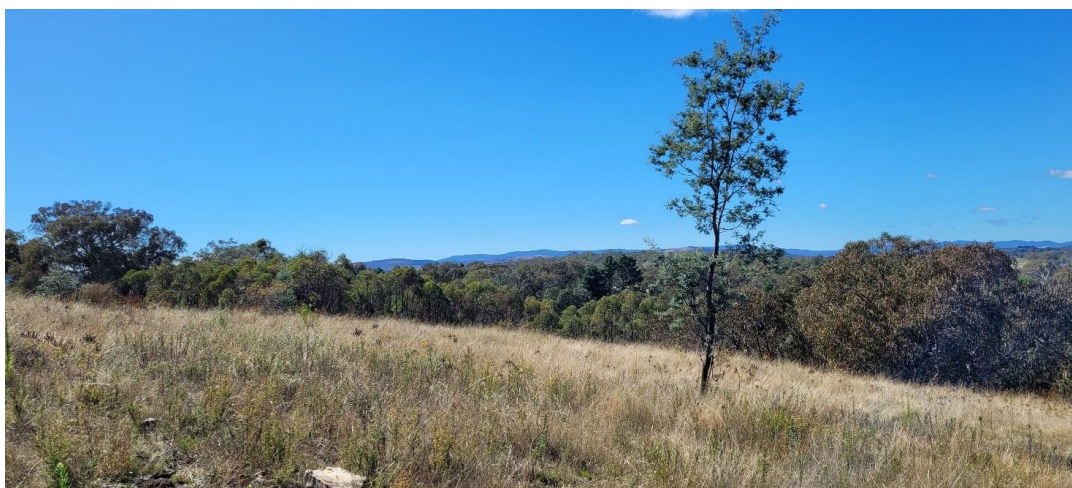




**Figure 5: A view of telecommunications tower and roadside cabinet from the south**



**Figure 6: A view looking east towards the telecommunications tower and roadside cabinet**



**Figure 7: A view looking southeast from the approximate location of the originally approved telecommunications tower**





***Figure 8: A view looking south from the approximate location of the originally approved telecommunications tower***



***Figure 9: A view looking south west of the location of the telecommunications tower***



***Figure 10: A view of telecommunications tower and roadside cabinet from the approximate location of the originally approved tower location***





**Figure 11: A view of the telecommunications tower and roadside cabinet from adjacent to the boundary fence of 58 Powell Drive**



**Figure 12: A view of the telecommunications tower and roadside cabinet looking south east**



**Figure 13: A distant view looking west towards the location of the telecommunications tower and roadside cabinet**





**Figure 14: A view looking east towards the location of the telecommunications tower and roadside cabinet from a clearing to the east**



**Figure 15: A view of the telecommunications tower base and connection to the roadside cabinet**





**Figure 16: A view looking north east from the base of the telecommunications tower**

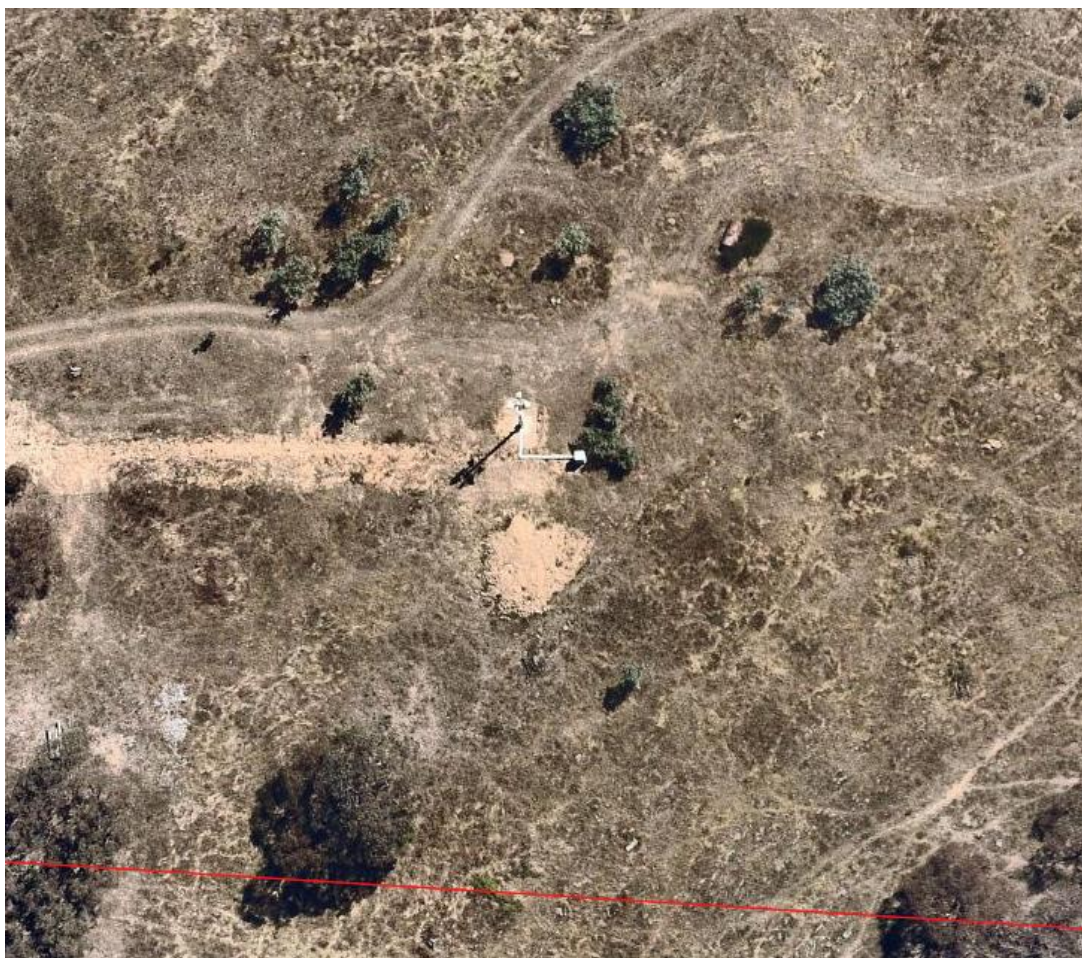


**Figure 17: A distant view looking north-west from the entrance to 399 Captains Flat Road**





**Figure 18: Aerial Imagery of 34 Powell Drive, Carwoola (Source: Nearmaps 2023)**



**Figure 19: Close up aerial imagery of the constructed telecommunications tower (Source: Nearmaps 2023)**



## PROPERTY BURDENS AND CONSTRAINTS

There are no easements or burdens on the land which could affect, or be affected by, the proposed development.

The site is however burdened by the Section 88B instrument that contains several restrictions on the site.

### PART 2

1. Terms of Restrictions as to User Firstly referred to in the above-mentioned Plan:

- (1) No dwelling house shall be erected on any lot burdened of materials other than new materials.
- (2) No dwelling shall be erected or permitted to remain on any lot unless it has a gross floor area excluding garages carports verandahs patios decks and the like of at least 110 square metres.
- (3) No advertising hoarding shall be erected on any lot burdened.
- (4) No pigs shall be kept on any lot burdened nor shall any animal boarding, breeding or training establishment be carried on upon any lot burdened.

### PART 2 (continued)

- (5) No temporary residential building or caravan shall:-
  - (a) be placed on any lot burdened without approval of the Council of the Shire of Yarrawluma and
  - (b) remain on any lot burdened and be used as a residence for a period longer than 6 months from the date of approval of the Council of the Shire of Yarrawluma.
- (6) No outbuildings (being all buildings other than a dwelling house) shall be erected on any lot burdened of materials other than Lysaght Colorbond bronze-olive or other materials of similar quality, substance and colour as may be approved by Jerrabomberra Estates Limited.
- (7) The restrictions (1) - (6) inclusive aforementioned may be released varied or modified by Jerrabomberra Estates Limited.

The restrictions noted above are not applicable to the proposed modification of the approved telecommunications facility.

## DESCRIPTION OF THE PROPOSED DEVELOPMENT

The application seeks Council approval to modify DA.2021.1628 for a modified location/setback of the approved telecommunications tower and deletion of the proposed solar panels from the plans.

The specific elements of the proposal are:

- Modify the approved tower location.
  - DA.2021.1628 approved the telecommunications tower on the approximate highest point of the land setback 102.9 metres from the northern boundary, 181.56 metres from the eastern boundary and 38.32 metres from the southern boundary.

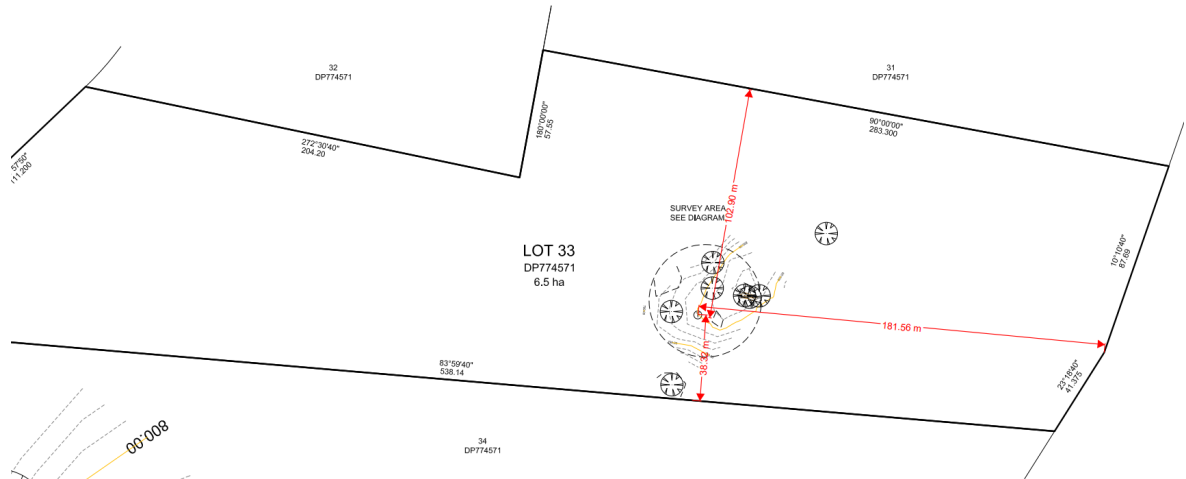


Figure 20: DA.2021.1628 Approved plans

- The modification proposes an altered location as constructed on site that is now 89.74m from the northern boundary, 52.05m from the southern boundary and 185.25m. This results in 13.1m reduction in the northern setback, 13.7m increase in the southern setback and a 3.69m increase in the eastern/rear boundary setback.

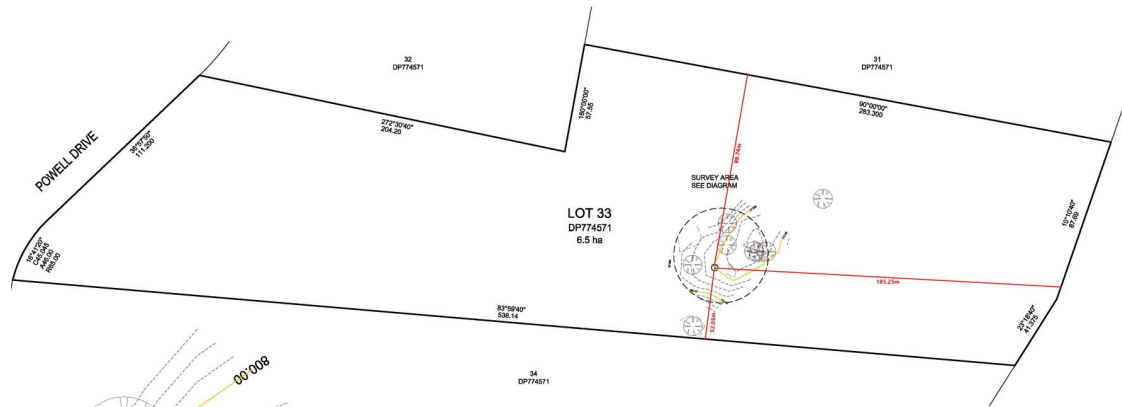


Figure 21: DA.2021.1628 Proposed modification plan with revised boundary setbacks

- The tower is to maintain its 12m in height , a close-up example of the type of tower approved is provided below:



- The roadside cabinet remains unchanged from its approved dimensions 1275H x 750W x 620D.
- Removal of the solar panels from the approved plans.

#### CONSENT AUTHORITY

In accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act) the proposal is considered to be local development and Council is the Consent Authority.

#### SECTION 4.10 DESIGNATED DEVELOPMENT – EP&A Act, 1979

The proposal not designated development.

#### SECTION 4.47 INTEGRATED DEVELOPMENT – EP&A Act, 1979

The proposal not integrated development and the following approvals are required:

Fisheries Management Act 1994	N/A	Heritage Act 1977	N/A
Mine Subsidence Compensation Act 1961	N/A	National Parks & Wildlife Act 1974	N/A
Protection of the Environment Operations Act 1997	N/A	Roads Act 1993	N/A
Rural Fires Act 1997	N/A	Water Management Act 2000	N/A

#### REFERRALS

##### INTERNAL REFERRALS

DA.2021.1628 was internally referred to Council's Building and Engineering teams with recommended conditions of consent provided. The modification is considered to be 'substantially the same development' as the original DA.2021.1628 and referral to internal sections of Council is not deemed necessary.

## EXTERNAL REFERRALS

### Canberra Airport Comments

Canberra Airport notes the proposed modification is a minor change in location that does not warrant further assessment by the Canberra Airport or change in conditions from the DA.2021.1628 approval.

### Department of Infrastructure and Regional Development

DA.2021.1628 was referred to the Canberra Airport and the Federal Department of Infrastructures, Transport, Regional Development and Communications for the intrusion of the tower, solar panel and cabinet into area prescribed as airspace for the Canberra Airport. The Federal Department “approve the controlled activity for intrusion of the tower, solar array and cabinet at 34 Powell Drive, Carwoola NSW into prescribed airspace for Canberra Airport to a **maximum height of 807 metres AHD**”.

The modification does not propose any change in the tower height or ground level from which the tower is constructed. The modification additionally proposes the removal of the solar array thereby reducing the amount of structures intruding the prescribed airspace.

The Canberra Airport concluded that the change in tower location does not warrant assessment of the modification.

## CONSIDERATION OF THREATENED SPECIES

Council is required under Section 4.15 of the *Environmental Planning and Assessment Act 1979* to make an assessment of whether the proposed development will have a significant impact on any threatened species, populations, or ecological communities, or their habitats. Such threatened species in NSW may be protected under the NSW *Biodiversity Conservation Act 2016* or under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.

Section 7.3 of the BC Act 2016 sets out what must be considered in determining whether a proposed development will have a significant impact. Section 7.3 requires the consideration of the following:

- any assessment guidelines applicable to the species, population, or ecological communities, or their habitats, and
- the application of the ‘seven-part test’ described in the Section.

The site was predicted to contain Red Stringybark, Red Box, Long-leaved Box, inland Scribbly Gum tussock grass in DA.2021.1628 under Council's predictive native vegetation mapping, Council concluded that the tower was proposed on cleared land that does not require clearing of vegetation.

The proposed telecommunications tower location as modified is noted as cleared land also that does not require any vegetation removal. As such, no impact on the existing vegetation is proposed with the modification.

## SECTION 4.14 CONSULTATION AND DEVELOPMENT CONSENT – CERTAIN BUSHFIRE PRONE LAND – EP&A ACT, 1979

Section 4.14 of the EP&A Act requires an assessment to be made of the proposal against the requirements of the Rural Fire Service document ‘Planning for Bushfire Protection 2019’. The Act allows this assessment to be made by the Council or the RFS. Assessments under Section 4.14 against the PBP 2019 need to be made for most development on bushfire prone land which does not require an approval under the *Rural Fires Act 1997* as integrated development.

Bushfire prone land on the subject site covers the entire site. DA.2021.1628 was referred to the New South Wales Rural Fire Service (NSW RFS) who raised no objection to the proposed development subject to the following condition of consent.

*“The development shall comply with the recommendations of the Bush Fire Risk Management Plan by Mackenzie Davey Consulting dated 25 January 2022 ref: CMD 13.22”.*

The recommendations of the Bushfire Risk Management Plan include:

- establishing a BAL-29 Asset protection zone (APZ)
- Components of the infrastructure should be non-combustible
- ensure that access to the hilltop location of infrastructures is kept clear and maintained
- prepare a draft Bush Fire Management Plan

The following separation distances were recommended from the Bushfire Report below:

Aspect	Effective Slope	Predominant Vegetation	Separation Distance
North	0-5° downslope	Grassland	12m
East	5-10° downslope	Forest	36m
Southeast	5-10° downslope	Forest	36m
West	5-10° downslope	Woodland	20m
Northwest	5-10° downslope	Woodland	20m

The telecommunications tower as constructed on site and identified on plans submitted with the modification remains compliant with the recommended separation distances to vegetation.



The Bushfire Report Recommendations note that “There are no construction standards for communications towers in AS.3959 (2018) Construction of Buildings in Bushfire Prone Areas.”, “An emergency management plan is not required for this type of development” and “There are no recommendations for landscaping in this report.

As the modification is consistent with the APZ separation distances and no change to compliance with the Bushfire Report recommendations is proposed, it is considered that the modified proposal is consistent with the conditions of consent of DA.2021.1628 and does not warrant further referral to NSW RFS.



#### **SECTION 4.55 Modifications Generally – EP&A Act, 1979**

In determining a development application, the consent authority is to take into consideration the following matters of consideration contained within section 4.15 of the Environmental Planning and Assessment Act, 1979 as relevant to the development application:

##### **4.55(1A) Modifications involving minimal environmental impact**

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

*(a) it is satisfied that the proposed modification is of minimal environmental impact, and*

*(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

*(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

*(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1), and (2) do not apply to such a modification."*

#### **Comment:**

Regarding Subclause 'a', the modification proposed is considered to have minimal environmental impact as the only proposed modification to the telecommunication tower is a minor change in location that remains situated with the centre of the rear of the site and the removal of a solar panel from the approved plans.

Regarding subclause 'b', the modification proposed is substantially the same development for the proposal, as modified, remains for the installation of a telecommunications tower, roadside cabinet with the only modification being its slightly different location and removal of the panel.

Regarding Subclauses 'c' & 'd' the modification application has been notified in which 10 unique submissions were received and considered in the assessment report below.

#### **SECTION 4.15 CONSIDERATIONS – S4.55(3) EP&A Act, 1979**

In determining a development application, the consent authority is to take into consideration the following matters of consideration contained within section 4.15 of the *Environmental Planning and Assessment Act, 1979* as relevant to the development application:

##### **4.15(1)(a) the provisions of:**

**(i) any environmental planning instrument**

#### **STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021**

The proposed telecommunications tower as modified requires development consent as it is proposed within an environmentally sensitive zoning, C4 Environmental Living.

Before determination of the modification, section 2.143 (previously CL115) states the following:

**"2.143 Development permitted with consent**

- (1) 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.
- (2) 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."

DA.2021.1628 was assessed against the 2010 *NSW Telecommunications Facilities Guideline Including Broadband*. In October 2022, the secretary issued a revised *NSW Telecommunications Facilities Guideline, Including Broadband*. The proposed modification has been assessed against the Guideline in the table below:

<b>NSW Telecommunications Facilities Guideline Including Broadband (October 2022)</b>	
<b>Principle 1: Design and site telecommunication facilities to minimise visual impact</b>	
<b>Principle</b>	<b>Comment</b>
(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.	Not applicable
(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.	Complies The tower location as modified remains sited towards the rear of the site with a considerable distance from Powell Drive at 12m in height to minimise visual impact. Additionally, the modification removes the solar panel thus reducing the number of structures within view from adjacent dwellings.
(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	N/A Telecommunication tower is not attached from a building
(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.	No ancillary facility proposed with the modification, only the approved roadside style cabinet; the modification proposes removal of the solar array
(e) Locate and design a telecommunications facility in a way that responds to its setting (rural, residential, industrial or commercial).	Complies The modified siting of the telecommunications tower remains centrally within the rear setback of the site.
(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.	N/A Site does not contain or adjoin a heritage item or heritage conservation area
(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.	The telecommunications tower as modified remains centrally located at the rear of the site with a significant distance from Powell Drive and adjoining dwellings.  It is noted that assessment of DA.2021.1628 included a site inspection of the neighbouring 58 Powell Drive to understand the previous objection that raised concern of adverse impacts to their views and concluded that with

	<p>180-degree views from 58 Powell Drive that the telecommunications tower does not have a significant building mass at 12m high and therefore unlikely to impact on views.</p> <p>The modification proposed an altered northern setback from 102m to 89m, while the communications tower is closer to 58 Powell Drive, it is considered that the building mass of the tower remains a minor scale that is unlikely to impact on neighbouring views as modified.</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>	N/A No vegetation removal required
<i>(i) Remove redundant telecommunications facilities and restore the site to the condition it was in prior to the facility's construction.</i>	N/A, no other telecommunications facilities on the site
<i>(j) Remove redundant components of existing facilities after upgrades.</i>	N/A, No other facility components on site
<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>	Complies, No other telecommunication facilities modification proposed the same tower, roadside cabinet, removal of the solar panel with only a minor change in its location.
<i>(l) Accord with all relevant industry design guides when siting and designing telecommunications facilities.</i>	No change in compliance with the industry design guides is proposed
<i>(m) Assess potential visual impact in alternative site assessments.</i>	The relocation proposes a minor decrease
<b>Principle 2: Co-locate telecommunications facilities wherever practical</b>	
<i>(a) As far as practical, locate telecommunications lines underground or within an existing underground conduit or duct.</i>	The telecommunications lines on site area above ground with minimal distance to the roadside style cabinet. The power supply to the tower is provided with underground lines.
<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>	N/A No other ancillary facilities proposed with the modification
<i>(c) Consider extending an existing tower as a practical co-location solution to new towers.</i>	N/A, No new towers proposed
<i>(d) Demonstrate that co-location is not practicable<sup>1</sup> if choosing not to co-locate a facility.</i>	N/A, No new towers proposed
<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>	N/A No other facilities to collocate
<b>Principle 3: Meet health standards for exposure to radio emissions</b>	
<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>	No change proposed to DA.2021.1628 conditions of consent that the telecommunications tower be maintained in accordance with the Radiation Protection Standard
<i>(b) Using the format required by ARPANSA, report on predicted levels of EME surrounding</i>	N/A, No mobile phone station proposed



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.	
<b>Principle 4: Minimise disturbance and risk, and maximise compliance</b>	
(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.	DA.2021.1628 was originally referred to Canberra Airport that raised no objections to the proposal subject to conditions of consent.  Referral of the modification to Canberra Airport has concluded no change to the recommended conditions of consent.
(b) Ensure no adverse radio frequency interference with any airport, port or Commonwealth defence navigational or communications equipment, including the Morundah Communication Facility, Riverina.	Referral of the modification to Canberra Airport has concluded no change to the recommended conditions of consent.
(c) Carry out the telecommunications facility and ancillary facilities in accordance with any manufacturer's installation specifications.	The Technical documents submitted with the modification application indicate no change to the approved specifications
(d) Protect the structural integrity of any building or structure on which a telecommunications facility is erected.	N/A Telecommunications tower is not proposed on any building
(e) Erect the telecommunications facility wholly within the boundaries of a property as approved by the relevant landowner.	Modified siting of the tower remains entirely within the site
(f) Ensure all construction of a telecommunications facility accords with Managing Urban Stormwater: Soils and Construction – Volume 1 (Landcom 2004), or its replacement.	The modification does not propose any changes to sediment and erosion controls conditions of consent.
(g) Mitigate obstruction or risks to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction.	N/A
(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.	The modification does not propose any change in construction hours
(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.	The tower is entirely within the site and does not require traffic control measures
(j) Guard open trenching in accordance with Australian Standard Section 93.080 – Road Engineering AS1165 – 1982 – Traffic hazard warning lamps.	N/A Modified siting of the tower remains at the rear of the site
(k) Minimise disturbance to flora and fauna and restore land to a condition similar to its condition before the work was carried out.	Modified siting of the tower remains in a cleared area that does not require tree removal
(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.	N/A

(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.	Modification does not propose any change to conditions of consent
(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.	N/A, Telecommunications tower remains within the site
<b>Principle 5: Undertake an Alternative site assessment for new mobile phone base stations</b>	
(a) Include adequate numbers of alternative sites in the alternative site assessment as a demonstration of good faith.	N/A, Principle 5 was not within the 2010 Gazetted Guidelines at the time of DA.2021.1628 approval furthermore, the proposal is not for a mobile phone base station.
(b) In addition to the new site selection matters in Section 4 of the Industry Code C564:2020 Mobile Phone Base Station Deployment: • 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 • if the preferred site is a site owned by the Carrier, undertake a full assessment of the site • indicate the weight placed on selection criteria • undertake an assessment of each site before any site is dismissed.	N/A, Principle 5 was not within the 2010 Gazetted Guidelines at the time of DA.2021.1628 approval furthermore, the proposal is not for a mobile phone base station.

## QUEANBEYAN - PALERANG REGIONAL LOCAL ENVIRONMENTAL PLAN (QPRLEP)

### 2022

An assessment of the proposal against the general aims of QPRLEP 2022 is included below:

Cl.	Aims	Complies
<b>1.2(2)</b>		
(aa)	to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,	N/A
(a)	to protect and improve the economic, environmental, social and cultural resources and prospects of the community,	N/A
(b)	To facilitate the orderly and economic use and development of land having regard to ecological sustainability principles.	N/A
(c)	To provide for a diversity of housing need of the community into the future.	N/A
(d)	to provide for a hierarchy of retail, commercial and industrial land uses that encourage economic and business development that caters for the retail, commercial and service needs of the community,	N/A
(e)	to keep and protect important natural habitat and biodiversity	Yes
(f)	to protect water quality, aquifers and waterways,	Yes
(g)	to keep, protect and encourage sustainable primary industry and associated commerce in rural areas,	Yes
(h)	to identify and protect the cultural heritage of the area, including the built heritage and the Aboriginal heritage,	Yes
(i)	to protect important scenic quality, views and vistas,	Yes
(j)	to facilitate the orderly growth of urban release areas,	N/A
(k)	to ensure development does not unreasonably increase the demand for public services or public facilities,	Yes
(l)	to identify, protect and provide areas for community health and recreational activities.	N/A

**Comments:** Complies

## **Part 5: Miscellaneous Provisions**

The relevant provisions contained within Part 5 of the QPRLEP 2022 are addressed below as part of this assessment:

### **5.10 Heritage conservation**

The proposed modification will have a no impact in relation to heritage. The site is not heritage listed, is not adjacent to a heritage item and is not located within a Heritage Conservation Area.

### **5.11 Bush fire hazard reduction**

The modification does not propose any change to the conditions of consent by NSW RFS for compliance with the 'Bush Fire Risk Management Plan by Mackenzie Davey Consulting dated 25 January 2022 ref:CMD 13.22'

## **Part 7: Additional Local Provisions**

The relevant provisions contained within Part 7 of the QPRLEP 2022 are addressed below as part of this assessment:

### **7.1 Earthworks**

Clause 7.1 of the QPRLEP 2022 establishes a number of matters requiring consideration for development involving earthworks. Earthworks associated with the development are proposed and form part of this application. The proposed earthworks will not have a detrimental impact on drainage patterns and soil stability or the existing and likely amenity of adjoining properties. The development application will be condition to mitigate the potential impact of soil erosion and the like during construction.

### **7.2 Terrestrial biodiversity**

Clause 7.2 of the QPRLEP 2022 makes for provision for developments that impact on terrestrial biodiversity. This clause is considered relevant to the proposed development as the site is identified as "Biodiversity" on the Terrestrial Biodiversity Map.

- (3) *In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider:*
- (a) *whether the development is likely to have:*
- (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
  - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
  - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
  - (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The modified siting of the tower remains located within a cleared area, as such it is considered the modification to the Telecommunications tower will not impact on existing vegetation.

### **7.4 Riparian land and watercourses**

Clause 7.4 of the QPRLEP 2022 makes provision for developments within riparian land and watercourses. This clause not considered relevant to the proposed development as the site is not identified as "Watercourse" on the Riparian Land and Watercourses Map". According to the map provided below only a small portion of land within the front setback is mapped as within the riparian lands that is not in proximity to the telecommunications tower therefore the relocation of the tower will not impact the watercourse or riparian land.



### 7.8 Airspace operations

Clause 7.6 of the QPRLEP 2012 makes provisions for developments located in areas that are affected by airspace operations and aircraft noise. The proposed modification will still penetrate the Obstacle Limitations Surface Map for the Canberra Airport. Therefore, the modification application was required to be referred to the relevant Commonwealth body for comment.

Airservices considered the site relocation as minor with no significant change in height and therefore did not require any change to the conditions of consent recommended as per DA.2021.1628.

### 7.12 Essential services

Clause 7.12 of the QPRLEP 2022 requires satisfactory arrangements to be made for water supply, stormwater drainage, solid domestic waste, sewage, and the treatment and disposal of effluent. Along with the supply of electricity and suitable vehicle access.

The modification does not propose any change to the site entrance for essential services which was considered in DA.2021.1628 as satisfactory subject to conditions to provide suitable power supply.

### 7.14 Scenic protection

Clause 7.14 of the QPRLEP 2022 makes provisions for developments impacting on scenic protection land. This clause **not** relevant to the proposed development as the site **not** identified as "Scenic Protection Area" on the Scenic Protection Map.

#### 4.15(1)(a)(ii) any draft environmental planning instruments

There are no applicable draft planning instruments that are or have been placed on public exhibition, to consider as part of this assessment.

#### 4.15(1)(a)(iii) any development control plan

Queanbeyan DCP 2012		
Section	Controls	Compliance / Conditions
<b>Part 1 – About this development control plan</b>		
<b>1.8</b>	<b>Public Notification of a Development Application</b> The modification application was notified to adjoining owners and submitters of the parent DA eleven unique submissions were received	Complies Modification has been notified.
<b>Part 2 – All Zones</b>		
<b>2.2.9</b>	<b>Access Ways Associated with Car Parking Areas</b> <i>All developments require access from the frontage road to car parking and service facilities. While in some instances access driveways may be sufficient some developments will require a higher</i>	Complies

	<p><i>standard of traffic control, such as a controlled intersection via a dedicated public roadway, auxiliary lanes and/or right turn bays to maintain efficiency and safety. Refer to Section 6 of the RMS Guide to Traffic Generating Developments Version 2.2 (2002).</i></p> <p>The modification does not change the scale of development and is not considered to require a separate track. The Company maintaining the tower will still have access as per the DA.2021.1628 approval</p>	
2.4	<p><b>Contamination Land Management</b> The proposal as modified remains satisfactory to State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 4 Remediation of Land (formerly SEPP 55).</p> <p>The site is not listed in Councils' register as being used for potential contamination.</p>	Complies
2.6	<p><b>Landscaping</b> As the proposal as approved originally was not categorised specifically as industrial or commercial and installation of infrastructure is not listed in table 7 of the DCP, no landscape plan is required for the modification</p>	N/A
2.7	<p><b>Erosion and sediment control</b> The modification does not propose any change to approval conditions of consent regarding site management.</p>	Complies
2.8	<p><b>Guidelines for Bushfire Prone Areas</b> The Bushfire protection measures as conditioned in DA.2021.1628 consent are not altered refer to section 4.14 of the report above.</p>	Complies
2.11	<p><b>Airspace Operations and Airport Noise</b> The modification does not alter compliance with Clause 7.5 of the QPRLEP 2022, refer to previous discussion in the assessment above</p>	Complies
2.12	<p><b>Preservation of Trees and Vegetation</b> The Telecommunications tower as modified does not require tree removal.</p>	N/A

Queanbeyan DCP 2012		
Section	Controls	Compliance / Conditions
<b>Part 5 – Rural and Environmental Zones and R5 Large Lot Residential Zones</b>		
5.1.3	<p><b>Objectives applicable to the Rural and Environmental and R5 Large Lot Residential Zones</b></p> <p>The modified Telecommunications tower maintains consistency with the relevantly applicable objectives (1) and (2) as provided below:</p> <ol style="list-style-type: none"> <li>1) <i>Ensure that development maintains the rural character of the locality and minimises disturbance to the landscape and the environment generally.</i></li> <li>2) <i>Ensure land use is ecologically sustainable, taking into account the environmental capabilities of the land and based on best management practices.</i></li> </ol> <p>The site is already developed with a dwelling and ancillary sheds/outbuilding. The tower as modified remains the same height and narrow stature incapable of visually dominating the landscape or adversely affecting the rural character of the locality. The tower remains in the rear setback away from views from Powell Drive.</p>	complies

	The modified siting of the tower is also clear and therefore no tree removal is associated with the development	
<b>5.2.3</b>	<b>Management of Flora and Fauna</b> As discussed above, the tower relocation does not require any vegetation removal therefore, a Flora and Fauna Assessment was not considered a requirement for this modification	N/A
<b>5.2.4</b>	<b>Aboriginal Heritage</b> The AHIMS search carried out for DA.2021.1628 did not indicate any heritage sites in proximity to the telecommunications tower and conditions of consent recommended. No change to these conditions of the consent is requested as part of the modification	Complies
<b>5.2.5</b>	<b>Bushfire Management</b> A Bushfire Report prepared by a BPAD accredited consultant was provided as part of DA.2021.1628 and referred to NSW RFS concluding with conditions of consent as discussed in Section 4.14 of this assessment above	Complies

**4.15(1)(a)(iia) any planning agreement or draft planning agreement**

No planning agreement has been entered into under section 7.4 of the *Environmental Planning and Assessment Act 1979*.

**4.15(1)(a)(iv) matters prescribed by the regulations**

Clause 61 of the *Environmental Planning and Assessment (EP&A) Regulation 2021* requires Council to take into consideration Australian Standard AS2601–2001: *The Demolition of Structures*, in the determination of a development application.

Having regard to these prescribed matters, the proposed development does not involve the demolition of a building for the purposes of AS 2601 – 2001: *The Demolition of Structures*.

Should this modification to DA.2021.1628 be approved, appropriate conditions as per the consent are to remain included to ensure compliance with any relevant regulations.

**4.15(1)(a)(v) any coastal zone management plan**

Council is not subject to a coastal zone management plan.

**4.15(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The impact from the modification to the telecommunications tower on the natural environment is limited as the only change proposed is relocation to cleared section of the site.

**4.15(1)(c) the suitability of the site for the development**

The subject site is relatively unconstrained and is considered to be suitable in its current state for the purposes of the proposed development.

**4.15(1)(d) any submissions made in accordance with this Act or the regulations**

The application was notified in accordance with Section 1.8 of the QDCP 2012 from the **16 December 2022** to the **23 January 2023** and renotified to provide original submitters additional time to submit from **3 February** to **24 February 2023**, with eleven unique submissions received.

Two (2) submissions were in support of the proposal noting improved internet speed and connection reliability as beneficial for working from home and home entertainment. The remaining nine (9) submissions object to the proposal raising the following concerns:

**1. Inaccuracies in the DA documentation as the Modification is not a 4.55(1) for minor error Misdescription etc. and is not substantially the same development**

Assessing officer's comments:

The modification proposed is categorised by Council as a Section 4.55(1A) modification involving minimal impact as the modification is substantially the same development as the original approved development being a single telecommunications tower, roadside cabinet generally located within the same portion of the subject site.

**2. The modification is incomplete with insufficient detail on the Statement of Environmental Effects and not appropriate for C4 zoned land**

Assessing officer's comments:

Council provides Statement of Environmental Effects (SEE) templates for various uses (e.g., Residential, Commercial, Industrial). The SEE provided uses council's industrial template which adequately provides information necessary to complete an assessment of the application.

**3. The tower appears over 12m in height, reflecting 14-15m in height and is therefore not substantially the same development.**

Assessing officer's comments:

A request for further information has been made to the applicant; revised documents have been received that confirm the height of the structure to the top of the telecommunications tower is 12m with the base of the tower buried within the ground level by 1016mm therefore, the telecommunications tower height is approximately 11m from the existing ground level to the top of the tower.

**4. Bushfire report from the original DA due to perceived errors should be considered invalid for the modification application.**

Assessing officer's comments:

The modification proposes the siting of the tower that maintains the recommended Asset Protection Zone distance from Bushfire vegetation as discussed in Section 4.14 of this Assessment Report above. The remaining Bushfire Assessment Report recommendations are not affected by the modified location of the telecommunications tower and will remain as conditions of development consent.

**5. This site contains environmentally sensitive lands that require consideration and protection.**

Assessing officer's comments:

The telecommunications tower as modified is relocated towards the rear of the site which is cleared and does not require vegetation removal. The proposed development is not expected to result in an adverse impact on the condition, ecological value and significance of the fauna and flora on the land or the importance of the vegetation on the land to the habitat and survival of native fauna or habitat elements providing connectivity on the land. The proposal does not fragment, disturb or diminish the biodiversity structure, function and composition of the land.

**6. Since the constructed tower differs from DA.2021.1628, assessment of the principles of the new 2022 Telecommunications Guidelines is required including the added principle 5.**

Assessing officer's comments:

Assessment of the modification is made against the Telecommunications Guidelines including Broadband (Updated 2022) and incorporated in the Section 4.15 considerations chapter of this assessment report.

**7. The development has potential to negatively impact on existing biolinks from Biodiversity Study Report Findings – Queanbeyan Local Government Area – BES - July 2008**

Assessing officer's comments:

The proposal is for a single telecommunications tower and roadside cabinet with no vegetation removal required as the modified siting is also cleared land. The proposed development is not expected to result in an adverse impact on the condition, ecological value and significance of the fauna and flora on the land or the importance of the vegetation on the land to the habitat and survival of native fauna or habitat elements providing connectivity on the land. The proposal does not fragment, disturb or diminish the biodiversity structure, function and composition of the land.

**8. Environmental Health concerns are raised from the potential increase in Electromagnetic Field (EMF) emissions to not only residents but also local fauna with less bird sightings after installation. Insufficient detail has been provided to address the health concerns.**

Assessing officer's comments:

The Australian Government's ARPANSA advice is that there are no established adverse health effects from the low exposure to the RF EME from mobile phone base station antennas.

DA.2021.1628 was approved subject to recommended conditions of consent requiring the development to comply with the relevant controls to protect residents from EME levels.

**9. A loss of social amenity as family and friends as an EMF precaution are reluctant to visit their property neighbouring the telecommunication tower**

Assessing officer's comments:

As per the above, the Australian Government's ARPANSA advice is that there are no established adverse health effects from the low exposure to the RF EME from mobile phone base station antennas.

DA.2021.1628 was approved subject to recommended conditions of consent to requiring the development to comply with the relevant controls to protect residents from EME levels.

**10. The telecommunications tower view will negatively impact adjoining property values due to lost views from the tower as an imposing structure**

Assessing officer's comments:

DA.2021.1628 assessment included a site visit of 58 Powell drive to assess the impact of neighbouring views and considered the scale of the structure relative to the 180-degree view that the proposal does not dominate or obstruct significant views. The modification proposed a minor change in location that does not result in significant obstruction of views.

**11. The development is not consistent with the third objective of C4 Environmental Living that the tower is not visually compatible with the landscape**

Assessing officer's comments:

The development is noted as a smaller scale telecommunications tower as a narrow, maximum 12m high structure will not dominate / significantly obstruct natural views as modified.

**12. The development does not maintain the rural character of the area as per section 5.1.3, objective 1 of the DCP**

Assessing officer's comments:

The development remains a smaller scale telecommunications tower of a narrow, maximum 12m structure that will not dominate or obstruct significant views and therefore does not reduce the rural character of the locality.



**13. Four Dishes are on the constructed tower that do not appear as per the technical specifications approved.**

Assessing officer's comments:

The application DA.2021.1628 is for a telecommunications tower with necessary mounting plates and brackets etc. for the purpose of rigging/fixing ancillary telecommunication structures and equipment.

The proposed modification DA does not include attached antennas and/or dishes.

A request for additional information was sent to the applicant dated 12 May 2023 to address this issue. The proponent provided a written response that the antenna structures and dishes installed meet the criteria of 'low impact facilities' as per the *Telecommunications (Low impact Facilities) Determination 2018*. Therefore, the antenna installations do not require development consent.

**14. The proposal is not consistent with the telecommunications guideline principle 1 to minimise visual impact.**

Assessing officer's comments:

Inspections of the site and adjoining 58 Powell in original DA.2021.1628 assessment note the scale of development relative to the extensive natural views will not dominate or significantly obstruct natural views.

**15. The proposal penetrates the Canberra Airport Obstacle Limitation Surface (OLS)**

Assessing officer's comments:

The modification was referred to Canberra Airport for comment which concluded that the tower relocation has not proposed significant changes that require any changes to the imposed conditions of consent.

**16. The new tower location is highly visible from Powell Drive and Captains Flat Road**

Assessing officer's comments:

The telecommunications tower as modified remains located in the rear setback for the site set at significant distance that views from Powell Drive do not obstruct natural views within the locality.

**4.15(1)(e) the public interest**

The public interest is served through the detailed assessment of this development application under the relevant local planning controls and legislation and consideration of any submissions received relating to it by Council. The proposed development is not considered to be contrary to the public interest.

**SECTION 64 CONTRIBUTIONS**

Section 64 of the Local Government Act 1993 allows contributions to be levied towards the provision of water, sewerage and stormwater infrastructure.

Section 64 Contributions not applicable to the proposed modification.

**SECTION 7.11 CONTRIBUTIONS**


Section 7.11 of the *Environmental Planning & Assessment Act 1979* permits councils to require as a condition of development consent, the reasonable dedication of land or the payment of monies, or both, for development that is likely to require the provision of, or increase the demand for public amenities and public services within the area.

Section 7.11 Contributions not applicable to the proposed modification.

## CONCLUSION

The application has been assessed having regard to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*, and is considered to be satisfactory for approval subject to the recommended conditions of consent.

## CONDITIONS OF CONSENT

  
**Signed:** \_\_\_\_\_ **Date:** 5 June 2023  
**Assessing Officer:** Wesley Folitarik (Consultant Planner)

**Determination:** DA.2021.1628.A modification be **Approved** under delegated authority pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.

**Signed:** \_\_\_\_\_ **Date:** <insent date>  
**Delegated Authority:** <insent name>



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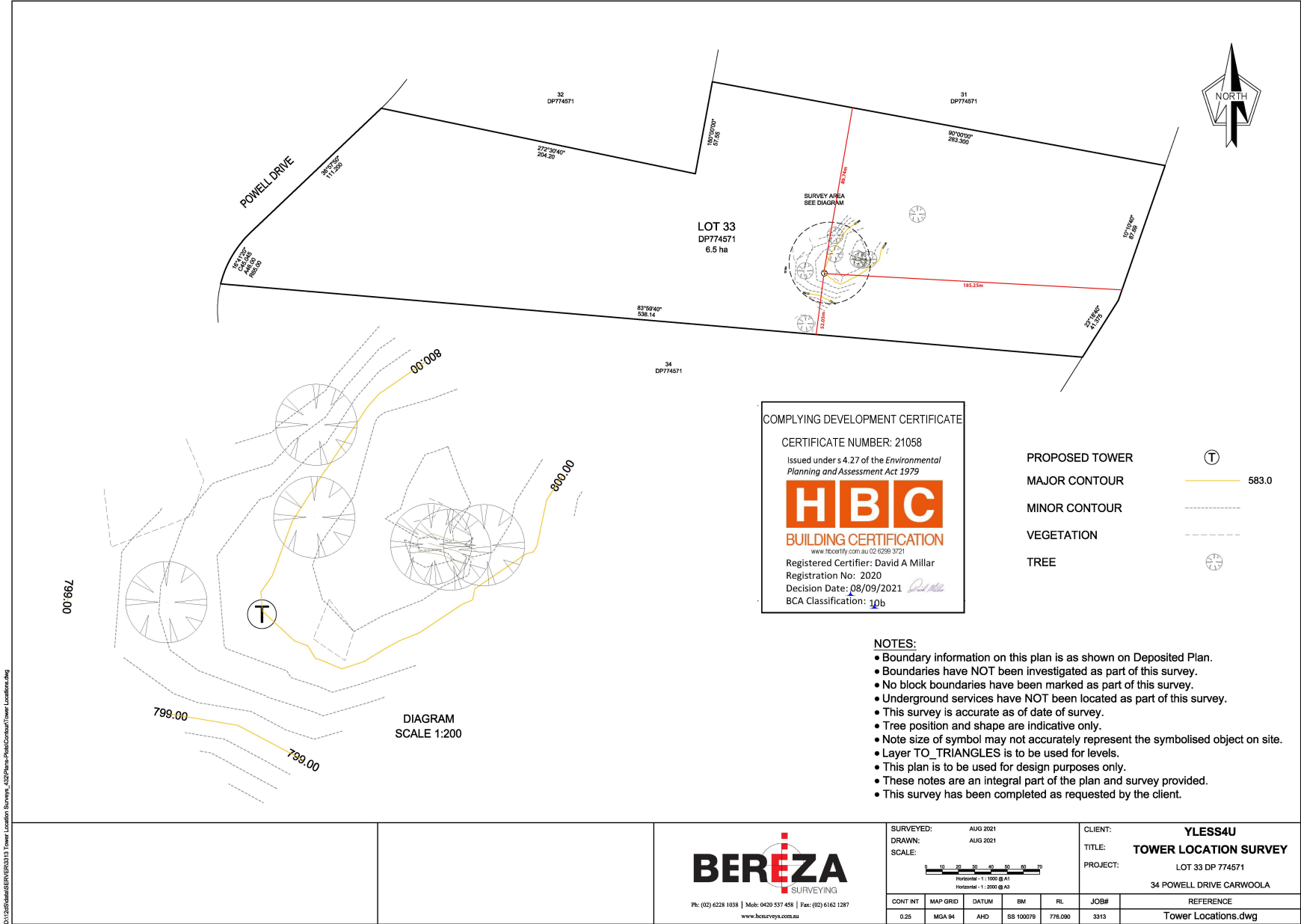
# **QUEANBEYAN-PALERANG REGIONAL COUNCIL**

## **Council Meeting Attachment**

**14 JUNE 2023**

ITEM 9.1            MODIFICATION TO DEVELOPMENT APPLICATION  
                         DA.2021.1628 - TELECOMMUNICATIONS FACILITY - 34  
                         POWELL DRIVE, CARWOOLA

ATTACHMENT 2    DEVELOPMENT APPLICATION SUPPORTING PLANS





Date: 09/09/2022  
Our Ref: 3313  
PO BOX 1630  
FYSHWICK ACT 2609  
PHONE : (02) 6228 1038  
MOBILE: 0418 620 172  
info@bcsurveys.com.au

## IDENTIFICATION SURVEY REPORT

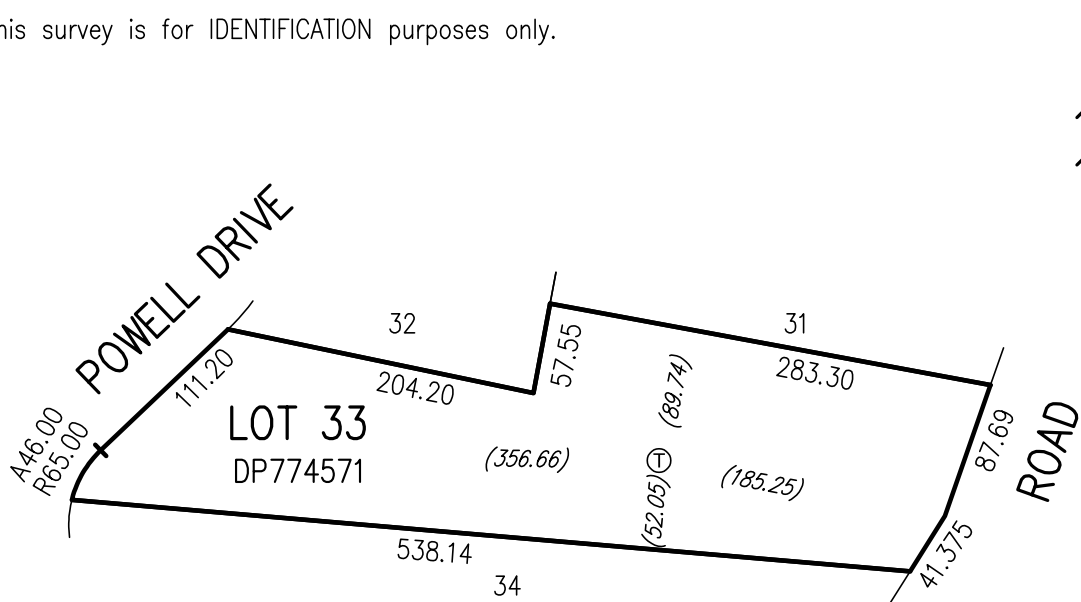
Attention: YLESS4U

I have surveyed the land being LOT 33 DP 774571, LGA of QUEANBEYAN-PALERANG REGIONAL, LOCALITY of CARWOOLA, PARISH of CARWOOLA, COUNTY of MURRAY having frontage to Powell Drive (known as number 34) in the state of New South Wales.

Erected thereon is a new telecommunications tower under construction. The position of the new works in relation to the boundaries is as shown on the diagram.

There are no apparent easements affecting the subject land.

This survey is for IDENTIFICATION purposes only.



TOP OF TOWER 811.02  
BASE OF TOWER 799.96

Peter Papas  
Surveyor, Registered under the  
Surveyors Act 2002

**LEGEND:**  
Ⓣ DENOTES TELECOMMUNICATIONS TOWER

**NOTES:**  
• MEASUREMENTS ARE TO CENTRE OF TOWER.  
• LEVEL INFORMATION SHOWN ON THIS PLAN IS RELATED TO THE AUSTRALIAN HEIGHT DATUM.

1. Roadside Cabinet – 1375H x 750W x 620D with 2 x fans & 2 x Filters Fitted – Concrete base measurements are approx.. 850 mm wide x 750 mm high and the concrete thickness will be approx.. 90 mm to 100 mm in depth.



2. Single Pole Tower with hydraulic capabilities for lowering and raising – pole depth 1.5 to 2 metres depth in ground. Picture below is similar to what we will be using.



## IP66 19" Field Cabinet

IP-1377562-T33

STEEL | SINGLE BAY 19" RACK | IP66

19" 24RU - 1375H x 750W x 620D

**IP Enclosures FC Range of IP66 19" Field Data Rack Cabinets** are designed for heavy duty outdoor applications to house sensitive data network and electrical equipment in harsh environments. They are suitable for a variety of outdoor applications including road and rail transport management systems and general data and network infrastructure applications.

**Protection:** Complies with IP66 IK10, NEMA 4  
(Excluding cutouts for fans/filters)

**Standard:** IEC62208, IEC/EN/AS60529, EIA-310-D

**Rack Unit Size:** 24RU

**Material:**

- Body and Plinth: 2.0mm galvanised steel sheet
- Doors: 2.0mm galvanised steel sheet
- 19" Data Rack Rails: 1.5mm galvanised steel sheet
- Gland Plate: 3.0mm aluminium
- Enclosure Seal: Polyurethane

**Body:** The robust monoblock body is fabricated using 2.0mm galvanised steel sheet. The body is fitted with rain hood/sunshield, plinth, vent hoods and 4 x lifting eye bolts. Flat face sealing surfaces are provided to increase seal life. A 3.0 mm galvanised steel split gland plate is also incorporated into the bottom face. Four cutouts 125mm x 125mm are provided to house fans and filters and each are covered with removable vent hoods.

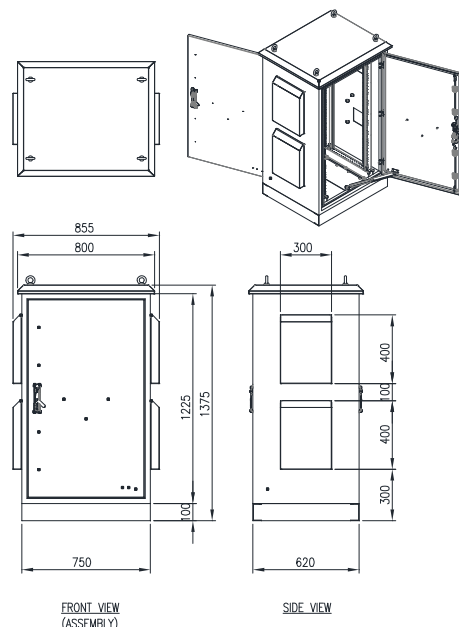
**Doors:** Front and rear doors are fabricated using 2.0mm galvanised steel sheet and are designed to provide flush recessed mounting to prevent vandalism and unauthorised access. The doors incorporate concealed removable hinges with captive pins. They are designed for a 110° opening and are provided with heavy duty door stays.

**19" Data Rack Rails:** Front and rear 19" data rack rails are fabricated from 1.5mm galvanised steel sheet.

**Seal:** A high quality full perimeter Polyurethane foamed in place (FIP) seal provides excellent sealing over a long life.

**Locks:** 3 point locking systems with key-lock swing handles.

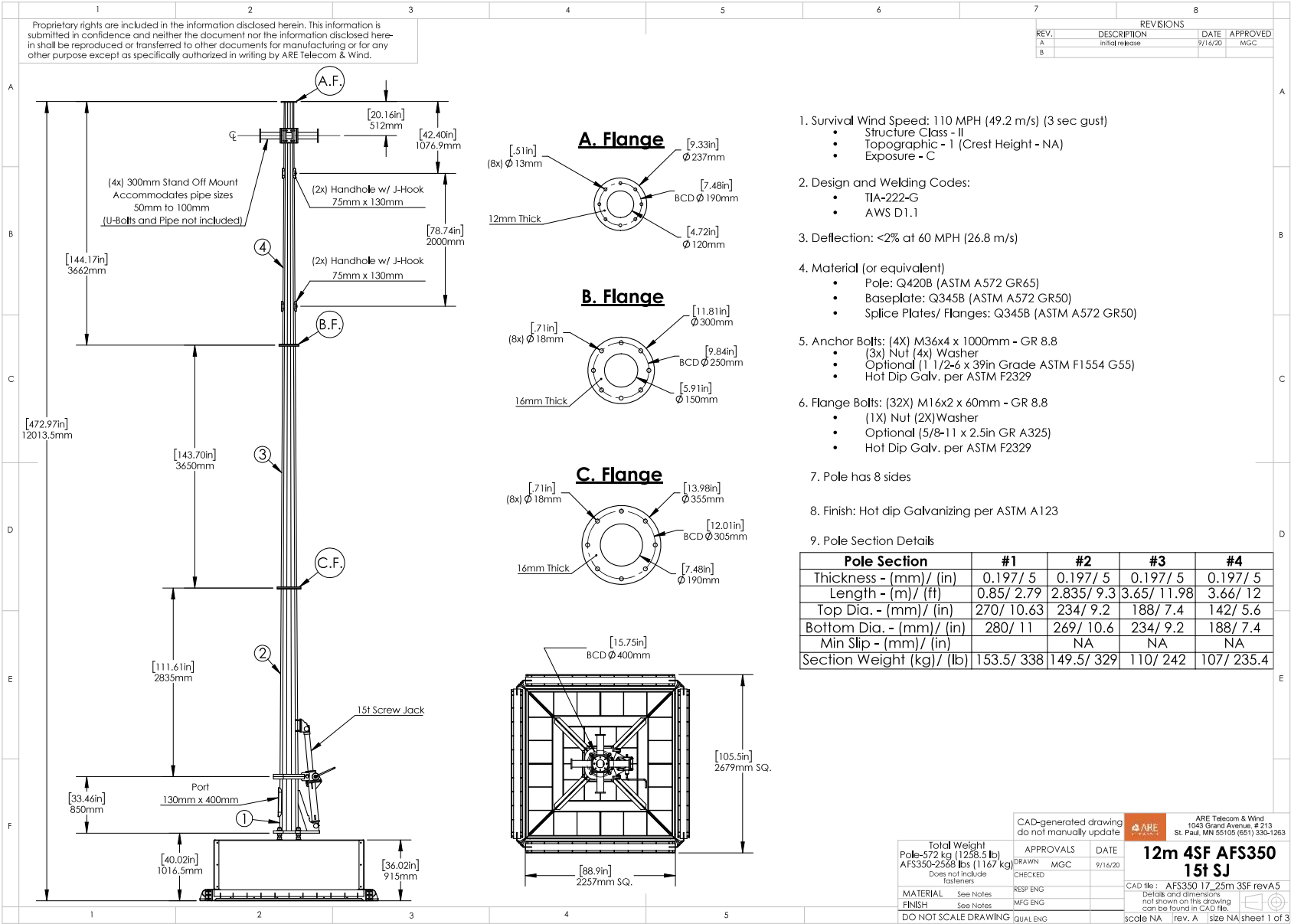
**Surface Treatment:** UL approved epoxy polyester powder-coated with a textured finish. 80-120 micron average thickness. T33 Smoke Blue smooth finish.

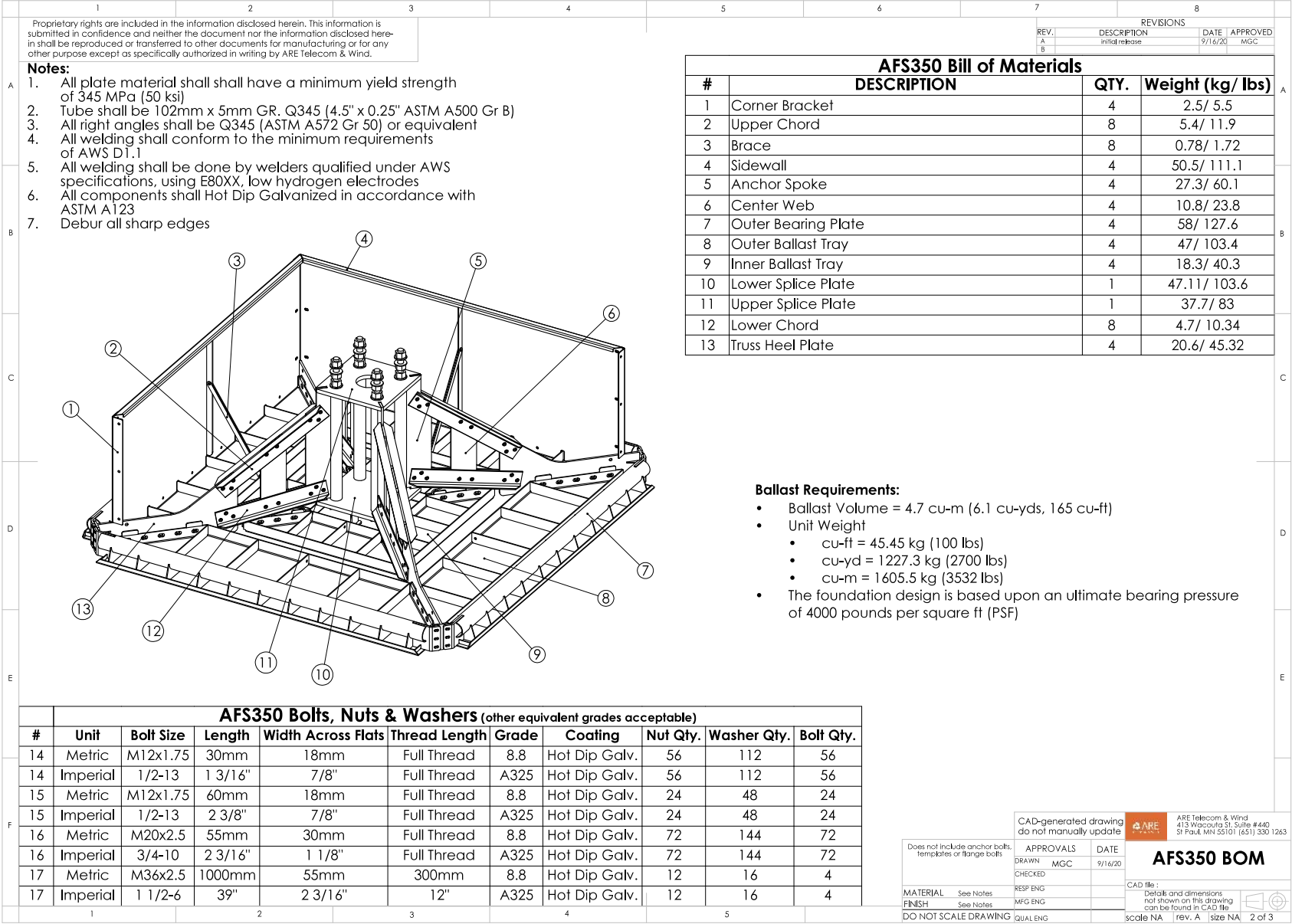


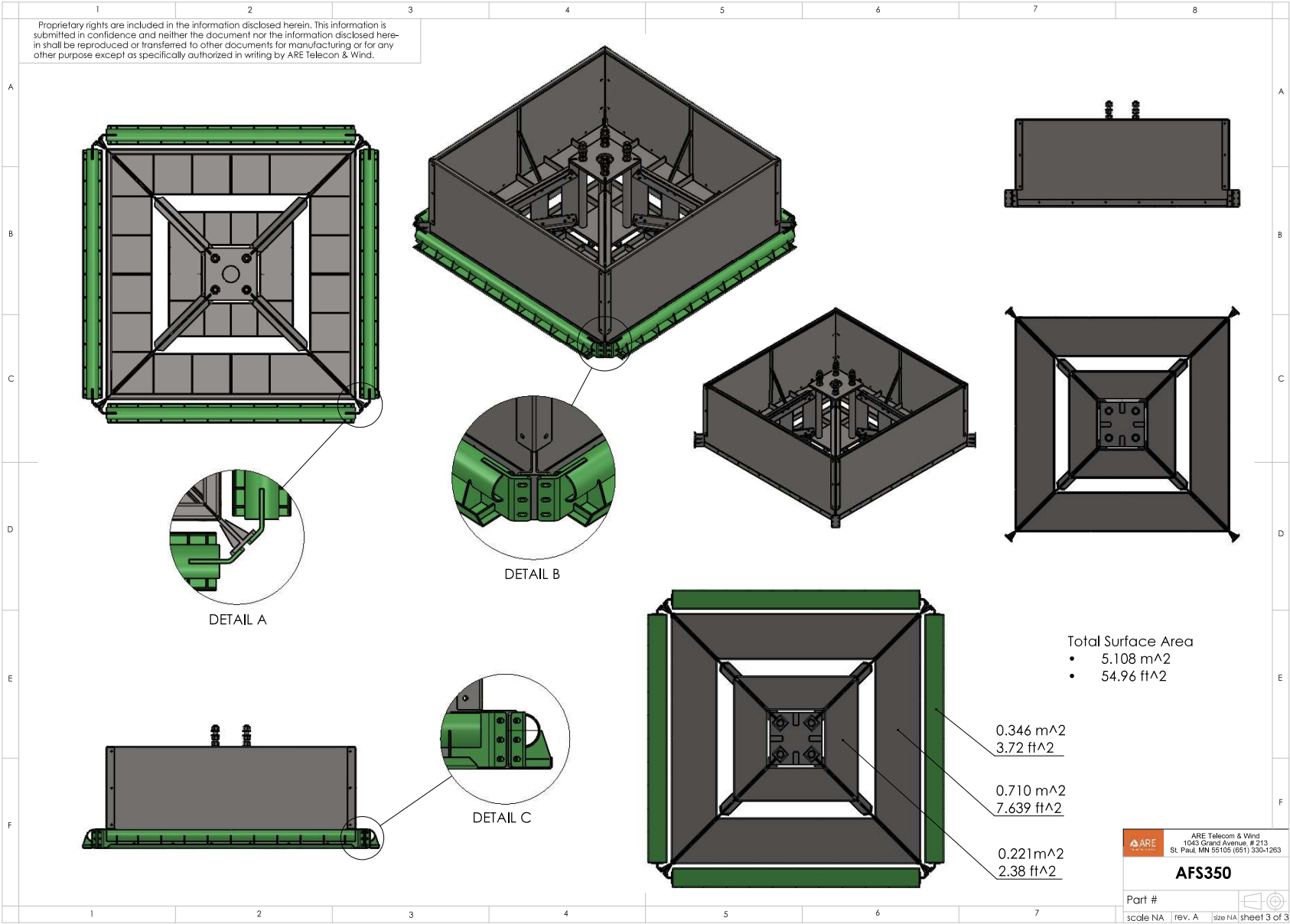
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# **QUEANBEYAN-PALERANG REGIONAL COUNCIL**

## **Council Meeting Attachment**

**14 JUNE 2023**

ITEM 9.1            MODIFICATION TO DEVELOPMENT APPLICATION  
                         DA.2021.1628 - TELECOMMUNICATIONS FACILITY - 34  
                         POWELL DRIVE, CARWOOLA

ATTACHMENT 3    DRAFT CONDITIONS OF CONSENT



**DRAFT CONDITIONS OF CONSENT**  
**DA.2021.1628.A**

**1. APPROVED DEVELOPMENT AND PLANS**

The development referred to in the application is to be carried out in accordance with the approved plans and documents including the following:

Title / Description	Prepared by	Issue/Revision & Date	Date received by Council
Tower location survey	Bereza Surveying	08/2021	13/12/2022
Identification Survey Report (Ref 3313)	Bereza Surveying	09/09/2022	13/12/2022
Details of the development	unnamed	undated	13/12/2022
Tower Plans	ARE Telecom and Wind	16/09/2020	13/12/2022

except as modified by any of the following conditions of consent.

*Reason: Development is undertaken in accordance with this consent & is used for the approved purpose only.*

**SPECIAL CONDITIONS**

**2. Rural Fire Services and Canberra Airport Conditions**

The proposal must comply with the conditions provided by Rural Fire Services and Canberra Airport as per Schedule 1 and Schedule 2 of this consent.

*Reason: To ensure the proposed development is consistent with the bushfire regulations and aircservices guidelines.*

**3. Radiation Protection Standards**

The development is to comply with the Mobile Phone Networks Code & the Australian Communications and Media Authority (ACMA) regulatory arrangements with respect to electromagnetic radiation exposure levels.

*Reason: To ensure compliance with NSW Telecommunications Facilities Guideline including Broadband (2010) in respect to health standards.*

**GENERAL CONDITIONS**

**4. Obtain Construction Certificate**

Obtain a construction certificate/subdivision works certificate from Queanbeyan-Palerang Regional Council or an appropriately accredited private certifier before undertaking any work. Forward a copy of any construction certificate/subdivision works certificate issued by a private certifier to Queanbeyan-Palerang Regional Council at least 2 days before undertaking any work in accordance with that construction certificate/subdivision works certificate.

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

ABN 95 933 070 982

*Reason: Work is undertaken in accordance this consent & relevant construction standards.*

#### **5. Obtain Occupation Certificate**

Do not occupy or use the premises until an occupation certificate has been issued by Queanbeyan-Palerang Regional Council or an appropriately accredited private certifier. Provide a copy of any occupation certificate, issued by a private certifier, to Queanbeyan-Palerang Regional Council no later than 2 days after the occupation certificate is issued.

*Reason: Ensure that the building complies with relevant standards.*

#### **6. Comply with the Building Code of Australia**

All work is to comply with the current edition of the Building Code of Australia.

*Reason: All building work is carried out in accordance with relevant construction standards.*

#### **7. Construction within Boundaries**

The development including but not limited to footings, walls, roof barges and guttering must be constructed wholly within the boundary of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath or adjoining land.

*Reason: Approved works are to be contained wholly within the subject site.*

#### **8. Copy to Owner**

A copy of this consent is to be provided to the owner.

*Reason: To ensure the owner is aware of the requirements imposed under the consent.*

#### **9. Retaining Walls**

Any retaining wall greater than 1000 mm is to be designed and constructed to structural engineer's details. Prior to issue of any construction certificate provide a certified copy of the design to Queanbeyan-Palerang Regional Council.

*Reason: Retaining walls are structurally strong enough to bear the loads put on them.*

#### **10. Batters**

No batter is to have a gradient greater than 1:4. Batters greater than 1:4 must be retained.

*Reason: Prevent soil erosion, water pollution and the discharge of loose sediment on surrounding land.*

#### **11. Unauthorised Use of Public Land**

No building materials are to be stored or construction activities undertaken on public or adjoining land without prior written approval from Council.

*Reason: To prevent unnecessary disturbance to public land.*

### **CONDITIONS TO BE SATISFIED PRIOR TO COMMENCEMENT OF WORKS**

#### **12. Appoint PCA (Building)**

Appoint a principal certifying authority before any work is undertaken. Provide details of the appointed principal certifying authority (if not Queanbeyan-Palerang Regional Council) to Queanbeyan-Palerang Regional Council at least 2 days prior to any work being undertaken.

*Reason: To provide for supervision of the subdivision works.*

### 13. Site Identification

The site where building work, subdivision work, or demolition work are proposed to be carried out shall be identified by a sign sited in a visually prominent position containing the following information;

- the development application number,
- name, address and telephone number of the principal certifying authority,
- name of the principal contractor (if any) and 24 hour contact telephone number, and
- a statement that "unauthorised entry to the work site is prohibited".

*Reason: To satisfy the provisions of Clause 136B and 227A of the Environmental Planning and Assessment Regulation 2000.*

### 14. Sediment and Erosion Controls

Install and maintain sediment and erosion controls, prior to and during construction activities, in accordance with the approved Erosion and Sediment Control Plan, to prevent soil erosion, water pollution or the discharge of loose sediment on surrounding land, as follows:

- (a) divert uncontaminated run-off around cleared or disturbed areas,
- (b) erect a silt fence to prevent debris escaping into drainage systems or waterways,
- (c) prevent tracking of sediment by vehicles on roads, and
- (d) stockpile topsoil, excavated material, construction and landscaping supplies and debris within the site.

*Reason: To minimise environmental impact associated with any works & to prevent soil erosion/water pollution.*

## **CONDITIONS TO BE SATISFIED DURING DEMOLITION AND/OR BUILDING WORKS**

### 15. Hours of Operation for Works

All works associated with the construction and/or demolition of this development must be carried out between the following hours unless Queanbeyan-Palerang Regional Council agrees in writing. A written application shall be made to Queanbeyan-Palerang Regional Council if a variation of hours is required.

Weekdays:	7.00am to 6.00pm
Saturdays:	8.00am to 4.00pm
Sundays and Public Holidays:	NIL

*Reason: To reduce the chance of offensive noise being created and to minimise the impacts of the development in its locality.*

### 16. Approval Documents

Keep a copy of all stamped approved plans, specifications and documents on site while work is being undertaken.

*Reason: Relevant documentation is available for perusal on site by a council officer, for compliance check.*

### 17. Construction Facilities

Toilet facilities are to be provided at or in the close vicinity of the work site on which work involved in the erection or demolition of a building is being carried out.

*Reason: To provide adequate facilities to the work site.*

#### **18. All Works to Be Confined to the Site**

All demolition, excavation, backfilling, construction and other activities associated with the development must:-

- a) Be carried out entirely within the allotment boundaries unless otherwise approved by Council.
- b) Comply with the requirements of AS 2601-2001 - The demolition of structures.
- c) If within one metre of the verge, the site must be protected by a hoarding which must be erected prior to the commencement of the demolition works.
- d) Be kept clear of stormwater, sewer manholes and service easements on the site.
- e) Any gates must be installed so they do not open onto any footpath or adjoining land.

*Reason: To ensure that all development activity associated with the development does not pose a hazard to life or property and that the effectiveness of public services is not impaired.*

#### **19. Demolition Works**

The demolition of the existing building must be carried out in accordance with the:

- a) requirements of the SafeWork Authority of New South Wales,
- b) *NSW Work Health and Safety Act 2011*, and
- c) *Australian Standard AS 2601-2001: The Demolition of Structures*.

*Reason: To ensure compliance with SafeWork and occupational health and safety requirements.*

#### **20. Construction Waste Management**

All waste materials generated on-site during construction are to be stored in enclosed containers and deposited in an approved landfill at regular periods.

*Reason: To ensure adequate waste management practices are in place during the construction phase.*

#### **21. Excavation and Backfilling**

All excavations and backfilling associated with the erection or demolition of a building must be executed in accordance with the requirements of SafeWork.

*Reason: To ensure excavation does not impact on adjoining property and compliance with SafeWork requirements.*

#### **22. Unexpected Finds**

The development is to proceed with caution. If any Aboriginal objects are found, works should stop and DECCW notified. If human remains are found work is to stop, the site is to be secured and the NSW Police and NSW Office of Environment and Heritage are to be notified.

*Reason: To ensure objects discovered during construction are protected and notified in accordance with the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales.*

### **CONDITIONS TO BE SATISFIED PRIOR TO ISSUE OF OCCUPATION/COMPLETION CERTIFICATE**

#### **23. Occupation Certificate**

The occupation certificate must not be issued until all conditions of consent have been satisfactorily complied with and all mandatory stage/required plumbing inspections undertaken. Plumbing and



drainage must be inspected by Queanbeyan-Palerang Regional Council at the relevant stages of construction in accordance with the attached inspection schedule and a final plumbing certificate obtained prior to issue of any occupation certificate.

*Reason: Development is safe & appropriate for occupation, and is completed in accordance with the consent.*

#### **24. Colours and Material Finishes**

The development is to be finished in materials that have a low reflectivity. Colours are to incorporate the use of muted, natural colours that will blend with, rather than stand out from, the landscape for major features such as walls, roof and fencing.

*Reason: The building is not visually intrusive in the landscape and does not cause glare.*

#### **25. Disturbed areas to be stabilised**

All disturbed areas must be stabilised by the application of grass seeding, turf or hydro-grass mulching or other surface treatment approved by Council prior to the issue of the final occupation/completion certificate. Do not use species that are listed under the *Noxious Weeds Act 1993*.

*Reason: Prevent soil erosion, water pollution and the discharge of loose sediment on surrounding land and to ensure that disturbed areas are rehabilitated.*

#### **26. Repair Damaged Public and Private Property**

All damage caused to public and private property during the establishment of the development must be repaired or reinstated prior to the issue of any Completion Certificate.

*Reason: To ensure that all public property in the vicinity of the development is maintained in its pre-development condition.*

#### **27. Erosion and Sediment Control**

Maintain erosion and sedimentation controls for as long as necessary after completion of works to prevent soil erosion, water pollution or the discharge of loose sediment on surrounding land. The controls are to remain in place until all disturbed ground surfaces are rehabilitated/revegetated and stabilised to prevent erosion or sediment loss.

*Reason: To minimise environmental impact associated with any works & to prevent soil erosion/water pollution.*

**Applications referred to in this consent or information to satisfy a condition of consent may be lodged through:**

[development@gprc.nsw.gov.au](mailto:development@gprc.nsw.gov.au)

Or in person at:

**Queanbeyan** 256 Crawford Street, Queanbeyan, NSW, 2620.

**Bungendore** 10 Majara Street, Bungendore, NSW, 2621.

**Braidwood** 144 Wallace Street, Braidwood, NSW, 2622.

*Please reference DA.2021.1628.A when information is submitted.*

**Please Note:**

**Dial Before You Dig**

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

**Telecommunications Act 1997 (Commonwealth)**

Telstra (and its authorized contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

# QPRC



## Schedule 1



**NSW RURAL FIRE SERVICE**

Queanbeyan-Palerang Regional Council  
PO Box 90  
QUEANBEYAN NSW 2620

Your reference: (CNR-32431) DA.2021.1628  
Our reference: DA20220313006032-Original-1

**ATTENTION:** Vagesha Wellalage

Date: Friday 1 April 2022

Dear Sir/Madam,

**Development Application**  
**s4.14 - Other - Industry**  
**Telecommunication Facility - 34 POWELL DR CARWOOLA NSW 2620, 33//DP774571**

I refer to your correspondence dated 09/03/2022 seeking advice regarding bush fire protection for the above Development Application in accordance with section 4.14 of the *Environmental Planning and Assessment Act 1979*.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provides the following recommended conditions:

### General Conditions

1. The development shall comply with the recommendations of the Bush Fire Risk Management Plan by Mackenzie Davey Consulting dated 25 January 2022 ref: CMD 13.22.

For any queries regarding this correspondence, please contact Anna Jones on 1300 NSW RFS.

Yours sincerely,

Martha Dotter  
**Supervisor Development Assessment & Plan**  
**Built & Natural Environment**

1

#### Postal address

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

#### Street address

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555  
F (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)

**OFFICES**  
144 Wallace St, Braidwood  
10 Majara St, Bungendore  
256 Crawford St, Queanbeyan

**POSTAL**  
PO Box 90, Queanbeyan NSW 2620

**PHONE**  
P: 1300 735 025

**EMAIL/WEB**  
W: [www.qprc.nsw.gov.au](http://www.qprc.nsw.gov.au)  
E: [council@qprc.nsw.gov.au](mailto:council@qprc.nsw.gov.au)

ABN 95 933 070 982

## Schedule 2



Australian Government  
Department of Infrastructure, Transport,  
Regional Development and Communications

File reference: F17/184-84

TO	CC	FROM
YLess4U Rural Internet Solutions <a href="mailto:helpdesk@yless4u.com.au">helpdesk@yless4u.com.au</a>  For  Mr Jason Fulton	Andrew Newton Canberra Airport <a href="mailto:A.Newton@canberraairport.com.au">A.Newton@canberraairport.com.au</a> <a href="mailto:airspaceprotection@canberraairport.com.au">airspaceprotection@canberraairport.com.au</a>  Civil Aviation Safety Authority <a href="mailto:airspaceprotection@casagov.au">airspaceprotection@casagov.au</a>  Airservices Australia <a href="mailto:airport.developments@airservicesaustralia.com">airport.developments@airservicesaustralia.com</a> <a href="http://jp.airservicesaustralia.com">jp.airservicesaustralia.com</a>  Queanbeyan-Palerang Regional Council <a href="mailto:council@qprc.nsw.gov.au">council@qprc.nsw.gov.au</a>	Flysafe Airspace Protection <a href="mailto:flysafe@infrastructure.gov.au">flysafe@infrastructure.gov.au</a>

### DECISION UNDER THE AIRPORTS (PROTECTION OF AIRSPACE) REGULATIONS 1996

**Proposed Activity:** Construction of a Pole, Solar Array and Cabinet

**Location:** 34 Powell Drive, Carwoola NSW

**Coordinates:** S 35.355515; E 149.295712

**Proponent:** Mr Jason Fulton

I refer to the application from YLess4U on behalf of Mr Jason Fulton (the Proponent), received by the Department of Infrastructure, Transport, Regional Development and Communications (the Department) on 23 November 2021 from Canberra Airport. This application sought approval under the Airports (Protection of Airspace) Regulations 1996 (the Regulations) for the intrusion of a pole, solar array and cabinet at 34 Powell Drive, Carwoola NSW (the site) into airspace which, under the Regulations, is prescribed airspace for Canberra Airport.

Under regulation 6(1), 'prescribed airspace' includes 'the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services - Aircraft Operations (PANS-OPS) surface for the airport'.

The Outer Horizontal Surface of the OLS above this site is at a height of 720 metres above the Australian Height Datum (AHD) and hence prescribed airspace above the site commences at 720 metres AHD. Due to the existing intrusion of the underlying terrain, at a maximum height of 807 metres AHD, the pole, solar array and cabinet will penetrate the OLS by up to 87 metres.

1

GPO Box 594 Canberra ACT 2601 Australia • Telephone: 02 6274 7111  
Website: [www.infrastructure.gov.au](http://www.infrastructure.gov.au) • ABN 86 267 354 017

OFFICES  
144 Wallace St, Braidwood  
10 Majara St, Bungendore  
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PHONE  
P: 1300 735 025

EMAIL/WEB  
W: [www.qprc.nsw.gov.au](http://www.qprc.nsw.gov.au)  
E: [council@qprc.nsw.gov.au](mailto:council@qprc.nsw.gov.au)

ABN 95 933 070 982



Accordingly, the construction of the pole, solar array and cabinet constitutes a 'controlled activity' under Section 182 of the *Airports Act 1996* (the Act). Section 183 of the Act specifies that controlled activities cannot be carried out without approval. Details of the penetration of prescribed airspace are provided in Table 1.

Table 1: Height and location of the proposed activity that will intrude into prescribed airspace for Canberra Airport.

Activity	Coordinates	Maximum height (AHD)	Penetration of prescribed airspace
Building	S 35.355515; E 149.295712	807 metres	87 metres

Regulation 14 provides that a proposal to carry out a controlled activity must be approved unless carrying out the controlled activity would interfere with the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned. Regulation 14(1)(b) provides that an approval may be granted subject to conditions.

Under the Regulations, the Secretary of the Department is empowered to make decisions in relation to the approval of controlled activities, and impose conditions on the approval. I am the Secretary's Delegate for the purposes of the Regulations.

#### **Decision**

In accordance with regulation 14, I **approve** the controlled activity for the intrusion of a pole, solar array and cabinet at 34 Powell Drive, Carwoola NSW into prescribed airspace for Canberra Airport to a **maximum height of 807 metres AHD**.

In making my decision, I have taken into consideration the opinions of the Proponent, the Civil Aviation Safety Authority, Airservices Australia's advice number YSCB-CA-126 and Canberra Airport.

In accordance with regulation 14(1)(b), I impose the following conditions on my approval:

1. The pole, solar array and cabinet **must not exceed** a maximum height of **807 metres AHD**.
2. Separate approval **must be sought** under the Regulations for any equipment (i.e. cranes, concrete pumps, etc.) required to construct the pole, solar array and cabinet. Construction cranes and/or concrete pumps may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations. Therefore, it is advisable that approval to operate construction equipment (i.e. cranes, concrete pumps, etc.) be obtained prior to any commitment to construct.
3. The Proponent **must advise** Airservices Australia at least three business days prior to the controlled activity commencing by emailing [ifp@airservicesaustralia.com](mailto:ifp@airservicesaustralia.com) and quoting YSCB-CA-126.
4. On completion of construction of the pole, solar array and cabinet, the Proponent **must provide** Canberra Airport with a written report on the finished height of the tower.



Breaches of approval conditions are subject to significant penalties under Sections 185 and 187 of the Act.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Grace Daniel', is written over a light blue horizontal line.

Grace Daniel  
A/g Director  
Airspace Protection & Airport Safeguarding  
Domestic Aviation & Reform

15 December 2021

# **QUEANBEYAN-PALERANG REGIONAL COUNCIL**

## **Council Meeting Attachment**

**14 JUNE 2023**

ITEM 9.1            MODIFICATION TO DEVELOPMENT APPLICATION  
                         DA.2021.1628 - TELECOMMUNICATIONS FACILITY - 34  
                         POWELL DRIVE, CARWOOLA

ATTACHMENT 4   REDACTED PUBLIC SUBMISSIONS

Development and Environment Section

24 January 2023

QPRC

PO Box 90

Queanbeyan NSW 2620

Attention : Belinda McManus – Assessing Officer

Dear Madam,

**Notice of Objection to DA.2021.1628.A**

I write for the second occasion to object to the construction of a wireless tower at 34 Powell Drive Carwoola. A copy of my earlier correspondence is attached. The grounds for objecting remain the same, and as yet remained unresolved despite now months since these objections were lodged. I am also aware that the owners of the property at 58 Powell Drive, who are the most impacted by the tower, have provided a long list of breaches of the QPRC's own code and compliance requirements in the Carwoola area.

One is puzzled and must ask why another DA process when the Council has yet to make a determination on the many objections already raised by Carwoola residents regarding the tower?

The behaviour of the company involved, Yless4U, seemingly should be of concern to the QPRC and further due diligence checks of its activities in other jurisdictions should be part of the process in informing the Council. I'm guessing that Yless4U is now betting on the Council not daring to order the tower be taken down now that it is constructed? And presumably because it has already secured its state government subsidy grant for the construction costs.

If the tower is providing a valued service that benefits the local community that is fine and good and it can be relocated to an alternative and less contentious location, which was there at the outset. As a Carwoola property owner I'm aware there are building envelopes, building restrictions and other environmental rules and regulations that I must comply with. The same should apply to a business entity – no special treatment.

Interestingly since the tower was erected, which is visible from our property, a number of our visitors have commented on the tower, labelling it an 'eye-sore' and questioning how the Council could allow its construction in that location, spoiling the view and causing concerns for a number of properties located near the installation.

I look forward to the QPRC resolving this matter in favour the Carwoola residents. Thank you.

Note the completed Declaration of Political Donations and Gifts Form is also attached.

Yours sincerely





Attention Assessor - Belinda McManus,

Good Afternoon Belinda,

I wish to bring to your attention our concerns relating to the location of a Telecommunications Tower Development at 34 Powell Drive, Carwoola.

- A robust consultation process was not undertaken. We attended one virtual meeting with a representative from YLess4U to advise the preferred location for a telecommunications pole was 34 Powell Drive. Although we were able to raise questions and concerns we found this meeting pointless as it appeared that a decision had already been made to locate the telecommunications pole at 34 Powell Drive.
- We believe there is a vast amount of uninhabited and vacant bushland in the area that could have been used to locate the telecommunications pole away from Powell Drive residents. Given that the majority of residents in the area have moved to the area to enjoy bush views and to be located away from city infrastructure.
- Environmental impacts are also another major concern including electro-magnetic emissions on nearby residents and the flora and fauna. No one has provided any information to residents to address this issue.
- Who is benefiting in the area from the tower? We certainly aren't even though we have contributed to its installation and on-going maintenance as NSW taxpayers.
- Were all compliance and legislative issues addressed as again this issue has been raised previously and again no information has been made available to residents to address this issue.
- A possible contributing negative impact on nearby property values as 34 Powell Drive has remained unsold for approximately 6 months?

Thank you for your consideration.

Regards,




31 January 2023

Ms Belinda McManus  
Queanbeyan-Palerang Regional Council  
PO Box 90  
Queanbeyan NSW 2620

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

**Objection to DA.2021.1628.A – 34 Powell Drive Carwoola NSW**

Dear Ms McManus

We are family members of the residents of 

Recently a telecommunications tower was constructed extremely close to our relative's south boundary fence, on the property next door. The impact of this very unattractive structure, is that they have lost the use of their backyard, a sizable area that includes a children's play area.

Having done a great deal of research on the effects of electro-magnetic emissions for a charity that involves children, we are reluctant to have our extended family, which includes 5 small children, play in such close proximity to such a tower.

EMR Australia, an Organisation which researches community health and safety, states *There's no doubt that EMF and RF radiation can adversely affect the body. In thousands of peer-reviewed scientific studies, researchers have shown that every-day levels of exposure result in adverse biological effects such as genetic damage, changes to important hormones and neurotransmitters, the stress response in cells, sperm damage, changes in brain wave patterns and sometimes breaches of the blood-brain-barrier. Some changes are consistent with cancer.*

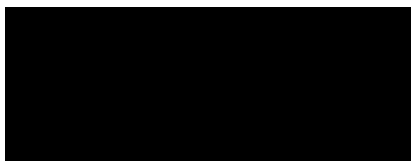
*Governments and EMF-emitting industries generally maintain that these changes are not important for health and that only the heating effects of radiation cause health problems. However, many scientists disagree and believe that the long-term consequences of these sorts of changes could cause problems.*

The International Agency for Research into Cancer has stated their mission is *Helping the public realise that wireless internet emits radiation that causes a myriad of health effects including damage to DNA, cancer, infertility, research show that autism, ADHD and other behavioural problems are also associated with wireless radiation exposure. Many scientific and medical experts have issued warnings because of the evidence before them.*

We understand that this tower was built against our relatives' will, even though they are the people most affected by it. Whilst mobile devices can be turned off to reduce exposure, towers cannot. How is this fair?

We are writing to object to this tower because of the injustice and the effect it is having on our extended family.

Yours sincerely



To whom it may concern,

Please see below original correspondence sent to Connecting Communities on the 30th August 2021 when there was the proposal of a telecommunications tower at the above mentioned property.

*I am writing as a resident in Carwoola to express my concerns about the proposal of a telecommunications structure in my area*

*We purchased acres at Carwoola to avoid such disruption to our living, specifically we purchased land zoned E4 environmental for our lifestyle and to avoid such structure and development in our neighbourhood*

*Although we live at [REDACTED], my son (almost 2) is cared for by my mother, resident at [REDACTED] - This is of grave concern given the close proximity of this structure to very young children*

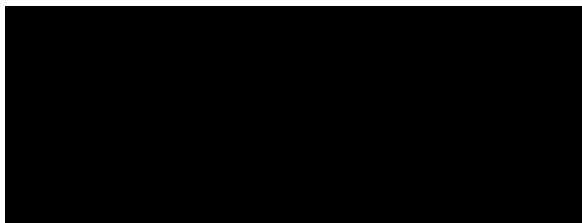
*The risk due to the bushfire (and recent bushfires in Carwoola), the environmental impact and disruption to our native habitat/vegetation and the aesthetic to our landscape*

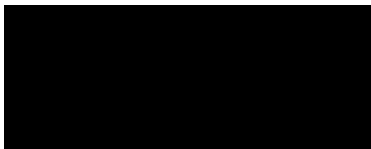
NO response has been received to date to this email and have since lodged a formal objection to council when the DA was submitted. Since the time of this email, the structure has been constructed and AGAIN need to raise concerns as outlined below

I am now writing on behalf of both myself and my mother, [REDACTED] as we share the same concerns with regards to the now completed structure. And we seek for our concerns to be addressed in a timely manner, not ignored as done previously.

- 1) The completed tower is not as described in the community zoom consultation or the QPRC DA application. The tower height is in fact 15 metres high with 5 dishes and 4 antennas, not the 12 meter basic, point to point tower
- 2) The tower is emitting a range of up to 82Ghz, again contrary to a low range frequency as advised
- 3) The location of the tower differs from the approved location (and is in fact closer to dwellings)
- 3) Please provide the studies and research of the emissions of a high frequency, multiple dish and the continual exposure this has on children, adults along with our local flora and fauna
- 4) Can you advise how the completed tower is compliant to the guidelines of E4 zone environmental living standards? It is highly visible and can be seen from both Powell Dr and Captains Flat Road
- 5) Can you advise how this structure is compliant with the council Biodiversity Conservation Act 2016 and Environmental Protection & Assessment Act 1979 and what due impact reports have been relied upon?

Kind regards





Attention - Belinda McManus

I once again write to object against the telecommunications tower at 34 Powell Drive Carwoola NSW.

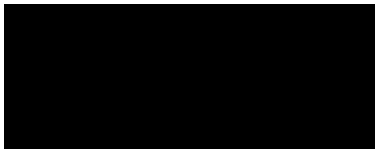
In addition to my objections already raised ( see attached points 1 to 5 ), I have further concerns objecting to the DA.2021.1628.A as below since the construction of the tower.

- Biodiversity Conservation and Environmental Protection. The location of the telecommunications tower and surrounding residents are located in close proximity to three nature reserves/parks with the intention of preserving our local flora and fauna. The Gang Gang Cockatoos and Micro Bats have not been observed as usual and I have concerns their habit has been disrupted by the likely emission of multiple microwave like frequencies of the tower.

-The telecommunications tower is a large, imposing structure that can be seen from multiple location on my property and specifically within my building envelope. This does not blend in with the environment or rural landscape of Carwoola.

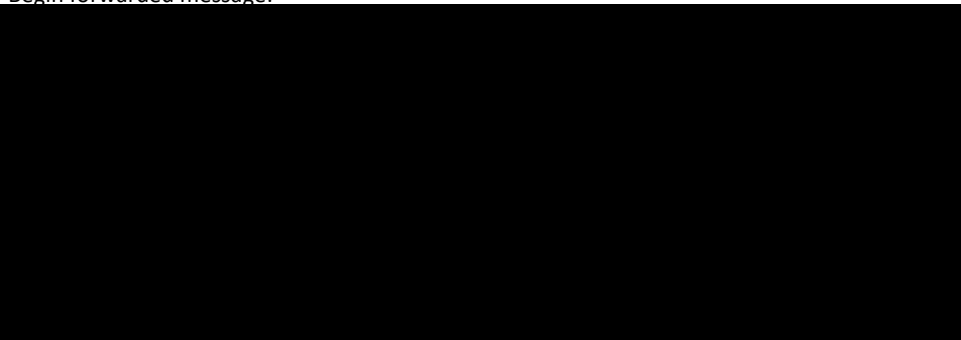
-The intention of the tower has been communicated by the applicant that this telecommunications tower will enhance the service to local residents however my experience has been contrary to this. A significant reduction to the quality and speed of the internet has been experienced since the completion of the telecommunications tower. This has left me with no option but to cancel my service with Yless4u and switch to a satellite option which has proved to be a far superior service.

Kind Regards



Sent from my iPad

Begin forwarded message:



**Subject: Telecommunications Tower at 34 Powell Drive CARWOOLA NSW 2620**

Hello to all,  
I purchased [REDACTED] in the October of 2020. There was NO mention in the sales contract or my legals searches of any proposed telecommunications facilities. I would not have proceeded if there was.

The first notification I received of this DA was in my letterbox from the owners of 58 Powell Drive one week prior to the online meeting held on 04/09/21 by yless4u

This tower is highly visible from my property.

Please accept the inclusion of the email below as confirmation that I strongly share the concerns as outlined in the email sent from my daughter and would like this considered as another objection to the tower constructed at 34 Powell Drive

Kind regards  
[REDACTED]

On 22 Sep 2022, at 11:18 am [REDACTED] wrote:

To whom it may concern,

Please see below original correspondence sent to Connecting Communities on the 30th August 2021 when there was the proposal of a telecommunications tower at the above mentioned property.

*I am writing as a resident in Carwoola to express my concerns about the proposal of a telecommunications structure in my area*

*We purchased acres at Carwoola to avoid such disruption to our living, specifically we purchased land zoned E4 environmental for our lifestyle and to avoid such structure and development in our neighbourhood*

*Although we live at [REDACTED] my son (almost 2) is cared for by my mother, resident [REDACTED] - This is of grave concern given the close proximity of this structure to very young children*

*The risk due to the bushfire (and recent bushfires in Carwoola), the environmental impact and disruption to our native habitat/vegetation and the aesthetic to our landscape*

NO response has been received to date to this email and have since lodged a formal objection to council when the DA was submitted. Since the time of this email, the structure has been constructed and AGAIN need to raise concerns as outlined below

I am now writing on behalf of both myself and my mother, [REDACTED] as we share the same concerns with regards to the now completed structure. And we seek for our concerns to be addressed in a timely manner, not ignored as done previously.

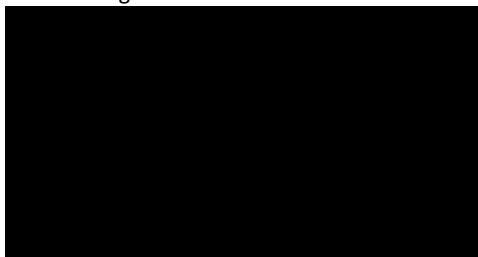
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5) Can you advise how this structure is compliant with the council Biodiversity Conservation Act 2016 and Environmental Protection & Assessment Act 1979 and what due impact reports have been relied upon?

Kind regards



**Objection to Development Modification DA.2021.1628.A**

34 Powell Drive, Carwoola, NSW 2620  
Yless4U Telecommunications Tower

To the Assessor - DA.2021.1628.A,

It appears from correspondence received from Yless4U by Carwoola residents and information provided by the Telco Authority, that many of the tower installations in the QPRC region, including the development at 34 Powell Drive, Carwoola (DA.2021.1628 and DA.2021.1628.A), have been funded by a grant to Yless4U through the Department of Regional NSW - Connecting Country Communities Fund's (CCCF) allocation of \$11.5m. Yless4U appear to have also received funding under other similar publicly funded programs including for a number of RFS installations.

Our discussions with the Telco Authority have clarified that, while the Telco Authority administers the CCCF program, the responsibility for ensuring that the relevant requirements are met in relation to installations, remains with the Proponent; and for planning requirements in relation to the QPRC Local Government Area, Council.

In the instance that a party is in receipt of public funds either by way of a grant or other funding model to undertake projects or activities, there ought to be a reasonable expectation of transparency, and that the recipient party's activities will be subject to public scrutiny. It is also reasonable for the public to expect that the activities will be conducted in accordance with industry standards of professional conduct, funding terms and conditions, legislative requirements, planning conditions and guidelines, and applicable licensing requirements; and that reasonable oversight will be provided by relevant agencies, including QPRC.

It is in the **Public Interest** to ensure that the public's hard-earned funds are appropriately acquitted in accordance with relevant legislation and guidelines.

In relation to QPRC, Section 8A (2)(e) of the Local Government Act (LGA)1993 requires that Council decision-making should be transparent and decision-makers are to be **accountable for decisions and omissions**.

As Council is aware from previous correspondence prior to this submission, there appear have been a number of errors, oversights, or omissions, and subsequent non-compliances, in relation to DA. 2021.1628, that will need to be considered in the assessment of, and decision made on Development Modification DA.2021.1628.A. ( Please refer to Attachment B).

In addition to the various non-compliances with the conditions of consent approved by council in relation to DA.2021.1628, it appears, from information provided to us under the Government Information Public Access (GIPA) process, that there were a number of legislative requirements, local policies and/or guidelines that were either disregarded, inadequately addressed, or glossed over by Council staff in the initial assessment of the development at 34 Powell Drive Carwoola; thereby not allowing Councillors the ability to



make a fully informed, fair and unbiased decision on DA2021.1628 as required by section 8 of the LGA 1993.

These include a perceived failure to adequately address the requirements of the:-

- Environment Planning and Assessment Act 1979
- Environment Planning and Assessment Regulation 2021
- State Environmental Planning Policy (SEPP) (Transport and Infrastructure) 2021
- NSW Telecommunications Guidelines including Broadband October 2022 (Principles 1-5)
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- NSW Biodiversity Conservation Act 2016
- Office of Environment and Heritage and NSW DPI *Threatened Species Test of Significance Guidelines*
- QPRC Regional Local Environmental Planning Policy 2022
- QPRC Development Control Plans (1,2,and 5)
- Relevant NSW Planning Circulars

Further, an apparent failure to observe the goals and objectives of:

- South-East and Tablelands Regional Plans 2036 and 2041
- QPRC Community Strategic Plan - Towards 2042
- QPRC Local Strategic Planning Statement – Towards 2042
- Residential and Economic Strategy Review 2015 - 2031
- QPRC Delivery Program 2022 - 2026
- Queanbeyan-Palerang Climate Change Action Plan: Community-Plan period 2020 - 2030

Additionally, it appears that numerous internal policies and guidelines may not have been adhered to including the QPRC:

- Code of Conduct
- Compliance Obligations Policy
- Compliance Enforcement Policy
- Environment Controls on Construction sites Policy
- Health and Safety and Quality Policy

Moreover, from a National standpoint, the following also do not appear to have been given appropriate consideration:-

- Australia's Strategy for Nature 2019-2030
- Commonwealth Environmental Protection and Biodiversity Conservation Act 1999
- Department of Environment *Matters of National Environmental Significance* (Significant impact guidelines 1.1)
- 2022-2032 Strategy for Threatened Species Action Plan

It appears that QPRC Council staff's focus with this development has been more about *how they can get the development approved*, rather than *whether the development should be approved*; or alternatively, *trying to making the development comply*, rather than *appropriately considering whether the development does in fact comply*. This appears to be at odds with the QPRC's Statement of Business Ethics.

When assessing the motives for this mind-set, I cannot conclude whether it is motivated by conflicts within Council, or by political agenda. Either motive is not appropriate for an agency that the public rely on to protect their interests and to provide strong, effective planning and decision-making.

I cannot fathom how this commercial development has been allowed to progress to this point given the apparent short-comings in due process for DA.2021.1628.

We are now in the position where we are considering yet another Development Application DA.2021.1628.A, that does not address many of non-compliances with DA.2021.1628, the impacts of which are exacerbated by the much closer proximity to adjoining residents. These matters outlined in Attachment B **are not minor modifications**. The height, bulk, mains electricity connection, and locational departures have serious implications for:-

- Bush fire safety and the bush fire report prepared (now invalid)
- Biodiversity considerations
- Threatened species considerations
- Critical Bio-link protection
- Airport safety
- Public Safety
- The amenity of local residents and the visual impact on the Community

My hope is that Council's attitude to development is not one of "*don't ask for permission; ask for forgiveness*". I firmly believe that the tower, giving due consideration to the above listed requirements, policies and guidelines and the intentions thereof, should not have been approved in the first place, and that the major modifications in construction, and the associated impacts, are totally unacceptable.

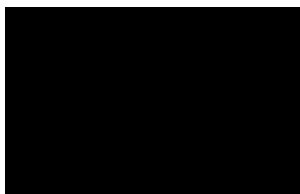
I wish to express my strong objection to DA 2021.1628.A at the constructed location or any other location on 34 Powell Drive Carwoola.

As a QPRC ratepayer of 25 years, I am very conscious that much time and significant resources are applied to the QPRC's planning and development framework. My question to Council is this:-

Is it all just empty rhetoric?..... or is QPRC really determined to:-

*".. preserve, enhance and protect the things we love about our community, such as the beautiful natural landscapes...."* (Message from the Mayor- Queanbeyan-Palerang Community Strategic Plan 2042), and to protect our environment, our critical biolinks and the C4 – Environmental Living attributes that motivated many of our community to locate here in the first place.

Yours sincerely,



## ATTACHMENT B

***I strongly object to Development Modification DA 2021.1628.A, and respectfully request that Council refuse the application on the basis that it is inaccurate; does not reflect the constructed telecommunications tower at 34 Powell Drive; and does not appropriately address legislative requirements, the Telecommunications Principles and the non-compliances with the conditions of consent for Development Application DA 2021.1628.***

***The tower as constructed, negatively impacts the environment, the character of the region, the surrounding residents, and is contrary to the Public Interest.***

While section 4.55(1) of the Environmental Planning and Assessment Act 1979 (EP&A Act) allows Council to modify a development consent granted by it to correct a minor error, misdescription or miscalculation, the modification application DA.2021.1628.A submitted by the Proponent Yless4U, does not incorporate the many aspects of the tower that have been changed since the original approval (including the site location). The modified application D.A.2021.1628.A documents submitted are essentially the same as the documents submitted with the original Development Application 2021.1628, apart from the altered site plans to reflect the change in location.

**The tower that has already been constructed on site, however, differs significantly** from the original development approved (DA.2021.1628) and does not comply with the conditions of consent.

The departures, including the location at which it has been constructed, are **substantial in nature**. They have major implications for the SEPP considerations upon which Council's original assessment was based, and for assessments of other legislative requirements including the EP&A Act and the Biodiversity Conservation Act 2016.

The tower is no longer substantially the same development for which the consent was originally granted, or assessed by staff prior to consent being granted. **The modified development has major impacts for the environment and the affected Community.**

## DESCRIPTION OF THE DEVELOPMENT

- The telecommunications tower is less than the 102 metres from the northern boundary specified in the QPRC Consent (DA2021.1628). Survey readings undertaken indicate the distance to be closer to 89 metres.
- The tower height is greater than the specified 12m in height approved (and communicated by the proponent in correspondence to the Community). It has been constructed at 814 AHD making it, depending on the actual contour on which it has been constructed, approximately 14-15 metres in height.
- The constructed tower in no way resembles the description (and the approved, stamped plans) provided by the Developer to Council, or to the Community:-
  - The development is not for a point-to-point tower as described, but has, as confirmed in the Telco Authority, been constructed as a hub-site. This means multiple dishes and relay infrastructure, significant visual bulk, and massively higher frequencies (confirmed by previous and newly acquired ACMA licences for the installation), contrary to the specifications approved by Councillors, and consultation with the community.
  - Rather than a solar array and road side cabinet as specified in the DA, there have been major earthworks undertaken to connect the structure to electricity mains over more than 200 metres at an environmentally sensitive, critical wildlife biolink, location.

### CONTENT OF APPLICATION

The EP&A Act requires that a modification application must be in the approved form, and contain all the information and documents required by the Act and detailed in section 100 of the EP&A Regulation 2021. The requirements of the regulations have not been met in that the modified application submitted, fails to appropriately provide -

- a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved,
- a description of the expected impacts of the modification,
- an undertaking that the modified development will remain substantially the same as the development originally approved,
- a statement that the owner (who is now selling the property) consents to the making of the modification application.

### COUNCIL CONSIDERATION

Section 4.55 of the EP&A Act requires that Council, in determining the application for modification of development consent, take into consideration matters referred to in section 4.15(1) of the Act as are relevant to the development application. Council must also take into consideration the reasons for granting the original consent that Yless4U is now seeking to be modified.

Section 4.15 (1) of the EP&A Act specifies that Council is to take into consideration any relevant provisions of any environmental planning instrument, development control plans, and regulations. Council is also required to consider the likely impacts of the development, including environmental impacts on both the natural and built environments, the social and economic impacts in the locality, the suitability of the site for the development, and the public interest. In doing so Council have a responsibility to observe the objects of the Act which include community welfare, amenity, good design, ecologically sustainable development, environmental management, protection of the environment, and conservation of threatened and other species of native animals and plants and their habitats.

I believe, having given due consideration to the GIPA documents provided to us by QPRC, that **Council has let our Community down** in relation to the telecommunications development at 34 Powell Drive, Carwoola (and other such developments in the QPRC LGA which have also been constructed on Conservation zoned land), in relation to the appropriate consideration of the EP&A Act, the Regulations, section 9.1(2) Directions, SEPPs, LEP, DCPs and other planning guidelines (addressed below).

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

### SECTION 4.14 CONSULTATION AND DEVELOPMENT CONSENT – CERTAIN BUSHFIRE PRONE LAND

Council has a responsibility to protect life, property and the environment from bush fire by discouraging development on bushfire prone land, by discouraging incompatible land uses on Bushfire Prone Land, by encouraging sound management, and by ensuring compliance with EP&A Act, section 9.1(2) Directions and the specifications and requirements of *Planning for Bush Fire Protection* (PBP) prepared by the NSW Rural Fire Service (PBP).

Section 4.14 of the EP&A Act specifies that Development consent cannot be granted for the carrying out of development on land that is designated as bush fire prone land, unless Council is satisfied that the development conforms to the specifications and requirements of *Planning for Bush Fire Protection* (PBP) prepared by the NSW Rural Fire Service that are relevant to the development, or Council has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.

Council must be satisfied that, if the development does not conform to the relevant specifications and requirements (which in this case it appears that it does not), consent can only be granted if it has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.

The Development structure at 34 Powell Drive, Carwoola is of a class that is categorised in the PBP as Infrastructure, section 8.3.7-Telecommunications towers. This is also confirmed in the *Mackenzie Davey Consulting - Bushfire Risk Management Plan*. The PBP specifies that for this class there is to be a minimum APZ managed to the standard of an inner protection zone, free from surface fuel, and with minimum canopy cover (which is at direct odds with Goal 2 of the South East Tablelands Regional Plan, Planning Priority 5 and 6 of the QPRC Local planning Statement- July 2020, and section 4.4.4 of the QPRC Residential and Economic Strategy Review 2015-2031, which stress the importance of the protection and enhancement of regional biodiversity corridors and local biolinks).

The detailed information to be contained within a Bush Fire Assessment Report submitted to the NSW RFS as outlined in RF Reg cl.44 should include, an assessment of the slope of the land on and surrounding the property (out to a distance of 100 metres from the boundaries of the property); identification of any significant environmental features on the property; and the details of any threatened species, population or ecological community identified under the *Threatened Species Conservation Act 1995* that is known to the applicant to exist on the property. The bush fire assessment for the development should also address the following matters:

- i) the siting and adequacy of water supplies for fire-fighting;
- iii) the adequacy of arrangements for access to and egress from the development site for the purposes of an emergency response;
- iv) the adequacy of bush fire maintenance plans and fire emergency procedures for the development site; and



v) an assessment of the extent to which the development conforms with or deviates from the standards, specific objectives, performance criteria and acceptable solutions set out in Chapters 5-8 of PBP.

While the Mackenzie Davey Report does touch on these matters, it appears that the development does not or cannot meet the requirements of *Planning for Bush Fire Protection* or the Bush Fire Risk Management Plan prepared by Mackenzie Davey Consulting as follows:-

*INACCURATE BASIS ON WHICH REPORT HAS BEEN PREPARED*

- The Mackenzie Davey report was prepared for a solar facility (not a structure connected to mains electricity), and for a different location.
- Important issues relevant to the site and the PBP have not been given due consideration.
- Despite the relevant Biodiversity Report for the area being readily available on the QPRC website, the Bush Fire Risk Management Plan does not address the environmental considerations associated with the location's conservation value as a critical biolink for wildlife, including threatened species.

*IMPORTANT CONSIDERATIONS OMITTED*

- The McKenzie Davey Report does not state and/or adequately demonstrate that the development conforms to the relevant specifications and requirements.
- Consideration has not been given to the likelihood of a bushfire, its potential severity and intensity and the potential impact on life and property in the context of the broader surrounding landscape.
- A vegetation analysis of the steepest slope within 100 metre appears to have not been undertaken i.e., midway between the west and north west measurement (refer Figure 2.4 Slope mapping). This, when considering the prevailing winds and fuel loads, will impact the potential fire runs to the site and the intensity thereof.
- No consideration has been given to the potential increased fire risk to the surrounding residents that a 14-15 metre metal tower poses for the possibility of ignition of surrounding bushland fire from lightning strikes. Likewise, there has been no consideration given to the risk associated with ignition from electricity fault for a structure connected to mains electricity. These have major impacts for the surrounding community assets at risk from bushfire.
- There is no statement assessing the likely environmental impact of any proposed bushfire protection measure (BPMs) and associated works, which is particularly important given that the location is an environmentally sensitive site on a critical biolink.
- No site plan has been provided showing access to water. Access must be available for the life time of the development. Given that there is no truck access available within 4m of the swimming pool that is referenced as a water source for firefighting (aerial imagery can be supplied on request), the appropriate water access for firefighters may be problematic in drier periods.
- No agreement has been formally secured for the management and maintenance of the APZ in perpetuity in a suitable manner, or for the supply of water for lifetime of the development (given that the drinking water tank may be the only real viable water source). There is no guarantee that a new owner or occupant of the property at 34 Powell Drive (currently for sale), will have the desire, the necessary experience, resources, or funds to assume responsibility for the maintenance of the APZ at its hilltop location. They may also have issues with the requirements for the maintenance of a water supply for use to protect a

third party's asset when they may be more inclined to protect their own (Note:- Site stored water for firefighting at the specified litreage, preferably solely dedicated for firefighting, must be available for the life time of the development)

#### ENVIRONMENTAL CONSIDERATIONS

In the instance that environmentally sensitive land needs to be protected, any development on that land needs to be carefully considered and properly assessed.

As the development site forms part of a critical biolink that provides connectivity to habitats for threatened species (addressed below), vegetation management may not be able to be legally guaranteed.

The recommendations in the Mackenzie Davey Bush Fire Risk Management Plan for vegetation clearing, road upgrades etc., have serious implications for vegetation regeneration and regrowth, necessary to enhance the biolink vegetation corridor. This is not the intention of the goals and priorities set out in the South East Tablelands Regional Plan, the QPRC Local Planning Statement, and the QPRC Residential and Economic Strategy Review 2015-2031.

The environmental constraints, in relation to the site at 34 Powell Drive given its environmental significance, may not be able to be overcome.

#### ACCESS

The adequacy of access to the development site may not be appropriate for firefighting purposes as follows:

- Given the terrain of the site at 34 Powell Drive (overhead imagery can be provided on request), it could be argued that firefighting access does not constitute two-wheel drive, all weather access, and that the capacity of road surfaces and causeways is not sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes). The Mckenzie Davey Report identifies that the track "*will require some improvement to provide adequate access for APZ maintenance and firefighting*", particularly "*grading and improvement to the track surface....in steeper areas*".
- The location of key access routes and the direction of travel means the potential for firefighters to be isolated in the event of a fire from the direction of the prevailing winds or in the event that ignition starts at the site from lightning strike or electrical fault. There appears to be only one way in and out.
- As the development is 380 metres from a public road, access to the property is via a locked electronic gate (i.e. a device that could prohibit access by emergency service vehicles), and there does not appear to be an alternative property access road (as is required for sites that are located more than 200m from a public through road, to ensure the safety of emergency services personnel); there appears to be serious life safety issues associated with the development site (not to mention those associated with the additional risk that the actual development poses for existing residents).

#### INCREASED RISK TO RESIDENTS

Care should be taken in Bushfire Prone land to ensure that new developments do not impact existing developments. The constructed tower at 34 Powell Drive impacts existing properties as follows:-

- A 14-15 metre metal structure that has the capacity to act as a "lightning rod". The addition of a mains electricity connection, and the tower's position on the top of a hill, all increase

the potential fire risk to the existing community from ignition. During the original community consultation in September 2021 (a zoom meeting during Covid), lightning strikes were raised as an issue. Yless4U's CEO confirmed that he was aware of two instances of lightning strikes.

- The development's ridge-top position also increases the risk of convective plume interaction and wind related impacts.
- The development impacts adjoining landowners and the bush fire management of their own properties.
- The development potentially increases the number of people exposed to unacceptable risk.
- The increase in fire risk associated with the development is not appropriate for the proximity to surrounded resident properties, the closest being at 89 metres.

#### SITE UNSUITABILITY

There is a significant recent fire history in the Carwoola valley that left landscape scarred and properties lost. The Community was greatly impacted by this loss and remains acutely concerned about any activity that increases the bush fire risk to our community. Council does not appear to have considered this in their assessment of the suitability of the land for the development in the context of bush fire risk, the existing land use, and community sensitivity.

Given,

- the above considerations in relation to the PBP and the original Bush Fire Risk Management Plan prepared,
- the provisions of Appendix 4 of the PBP being not appropriate for an environmentally sensitive site located on critical biolink for wildlife,
- the location of the development in close proximity to a densely vegetated reserve to the west with significant fuel loads (noting that the prevailing winds are generally from the west or north-west),

the site at 34 Powell Drive is wholly unsuitable for a development that could potentially increase bushfire risk. The modifications made to the development since approval, including the location closer to adjoining residents are also highly inappropriate in the context of Bushfire risk.

Additionally, it is worth noting that, in relation to the original D.A.2021.1628:

- The (unsigned) RFS report issued on 1 April 2022, did not provide any approval for the development. It served only to provide a recommended condition that *"The development shall comply with the recommendations of the Bush Fire Risk Management Plan by Mackenzie Davey Consulting dated 25 January 2022 ref: CMD 13.22."*
- Given the significant changes in the development and the various omissions and non-compliances with *Planning for Bushfire Protection (PBP)*, it is clear that the Mackenzie Davey Report should be considered to be no longer valid.
- It should also be noted that the Mckenzie Davey Consulting Report was prepared for Yless4U *"to support the planning application for the installation"*, and was presumably paid for by Yless4U.
- The validity of the RFS assessment has been called into question given the relevant RFS report attached to The QPRC Delegated Report – DA 2021.1628 was unsigned, and a

perceived conflict of interest (raised in previous correspondence QPRC) existed that could be viewed as potentially impacting an RFS assessment.

- From the GIPA documents provided to us, it appears that the RFS originally rejected the development referral before the Mackenzie Davey Report was supplied.
- The senior staff member subject to the abovementioned conflict, also influenced staff in their assessment process by directing them to “keep the pressure” on RFS to provide its report (GIPA documents).

## EP&A Act 1979 - SECTION 4.15 EVALUATION CONSIDERATIONS

### ENVIRONMENTAL PLANNING INSTRUMENTS

#### 1) STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

##### SEPP (Transport and Infrastructure) 2021

#### 2.143 Development permitted with consent

*(1) Development for the purposes of telecommunications facilities, ..... may be carried out by any person with consent (of the consenting authority) on any land.*

*(2) 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.*

#### NSW Telecommunications Guidelines including Broadband (Updated 2022)

The constructed tower at 34 Powell Drive in no way resembles the descriptions provided to the Community and the stamped plans accompanying the original Development Application DA.2021.1628. It has been constructed as a communication hub with massively higher frequencies, additional dishes and relay equipment; a significant departure from Community consultation and the Development Application approved. The pre-approved assessments made by Council in relation to the NSW Telecommunications Guidelines for DA.2021.1628, appear to be no longer applicable.

**Principle 1:** Design and site telecommunications facilities to minimise visual impact

- **Principle 1(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.*

**Not met** – The tower is greater than the 12 metres in height approved by Council, at a hilltop location. It is a free-standing structure that towers above tree-tops, with physical dimensions (including support mounts) that are completely at odds with the scale and height of other rural-residential development in the area. The unapproved modifications from point-to-point to telecommunication-hub, has involved the addition of multiple antennas (9 in total) which create visual clutter and bulk in the area, and can be seen from roads including Powell Drive, the Captains Flat Road, and the Kings Highway.

- **Principle 1(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.*

**Not met** – The tower is an unsightly feature that is predominantly backgrounded against the sky; no amount of colour will make it blend with the surrounding environment.

- **Principle 1(e)** *Locate and design a telecommunications facility in a way that responds to its setting (rural, residential, industrial or commercial).*

**Not met** – The facility has not been designed to respond appropriately to its rural landscape setting and greatly detracts from the C4 (Environmental Living) character of the area. Its size and location adversely impacts the vistas of neighbouring properties and other properties in the vicinity.

- **Principle 1(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.*

**Completely disregarded**- The tower obstructs important elements of the surroundings including significant views, vistas and panoramas from both public and private land. It is approx. 14-15 m in height, is 89 metres from the northern boundary (not the 102 metres specified), has a significant impact on the views of the Brindabellas and southern aspects, and is visible from roads.

The closer proximity to our adjoining property and the aspect in relation to our residence (i.e., the fact that we look up at it from all south facing rooms), makes it an extremely unsightly and prominent feature, so much so, that we find it unpalatable to have south facing blinds fully open because of the adverse impact that the tower has on our once beautiful country views.

The area impacted by the tower was previously an area where we conducted much of our living. It includes hilltop seating where we regularly sat to take in the 180-degree views of the Brindabellas and surroundings, an enclosed fire pit for winter fire-side gatherings, and a children's play area. The tower has rendered the area unusable – no-one wants to sit in such close proximity to, or be forced to look at the tower; meaning that we have, as a direct result of the tower, been deprived of the very reason we chose to live here.....the view, amenity and enjoyment of our surroundings. These negative impacts extend not only to our immediate family, but to our friends and extended family.

- **Principle 1(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.*

SEPP Environmental Planning Policy (Biodiversity and Conservation) 2021- section 2.32, requires a permit or approval to clear native vegetation for the maintenance of a telecommunications infrastructure that is not an 'existing' structure (at the date of introduction of the SEPP - 1 March 2022). It appears from GIPA documents obtained, that Yless4U has already undertaken clearing for maintenance of the development site (with the approval of Council). However, it appears this activity may have been contrary to the requirements of section 6.16 of the Commonwealth Telecommunications Code of Practice 2021. Section 6.16 requires Notice to the Environment Secretary if an activity could have an adverse effect on a threatened species of flora or fauna, or could damage part of a habitat, or part of a place that is essential to the continuing existence of a threatened species of flora or fauna (presumably a clearing activity on a critical biolink that is essential to the connectivity for threatened species to habitats and reserves, would require such notice).

- **Principle 1(k)** *Where possible, consolidate telecommunications facilities to reduce visual clutter and work with other users on co-location sites to minimize visual clutter.*

**Not met** – Please refer to **Principle 2** below.

- **Principle 1(l)** *Accord with all relevant industry design guides when siting and designing telecommunications facilities.*

**Not met** – Yless4U is a telecommunications carrier that erects fixed wireless telecommunication and communications equipment (including towers greater than 12 metres in height, with cabinets that contain connection to power, server rack, server and switches), to enable their subscription-based internet connectivity and communication service. The tower at 34 Powell Drive holds multiple dishes and antennas that receive and transmit at multiple frequencies up to 82 GHz.

It is my understanding from the definitions contained in the Mobile Phone Station Deployment Code (C564:2020), that this code also applies to Yless4U on the basis that:-

- 1) It is a licenced carrier that installs and operates fixed radiocommunications infrastructure,
- 2) The structures emit EME, and
- 3) The radiocommunications infrastructure is capable of being used to supply internet enabled Public Mobile Telecommunications Services (i.e., not a non-public network used within an organisation, but accessible by the public via subscription).

This is also confirmed in the Mckenzie Davey Report prepared for Yless4U, *“the tower is designed to improve internet and mobile telephone coverage”*. [ Discussions with an ARPANSA scientist have also suggested that the long antennas housed on the tower are more consistent with telephone - they also alluded to the height distance between those antennas and our roof top, being somewhat “unusual”).

Industry Standard C564:2020 sets guidelines for site selection, design and operation of like facilities, and for application of the Precautionary Principle. It appears that a Carrier should have written procedures for site selection that can be made available to the public on request. The Carrier should also be able to make available to the public on request, the summary of the sites considered and the detailed reasons for the selection of the preferred option including the reasonable service objectives; the service coverage; power levels; the amount of usage; EME exposure to the public; the likelihood of an area being a community sensitive location (the objective being of avoiding community sensitive locations); relevant state and local government telecommunications planning policies; the outcomes of consultation processes with Councils and Interested and Affected Parties; the heritage significance (built, cultural and natural); and the physical characteristics of the locality including elevation and terrain.

It should be noted that the *Telecommunications Code of Practice 2021* also requires that a carrier take all reasonable steps to cause as little detriment and inconvenience, and to do as little damage as practicable. It also states that even if no code or standard is in force for an activity, *“best practice” ‘is conduct regarded by people constructing facilities substantially similar to the carrier’s facilities as using best available design, planning, and location practice to minimise the potential degradation of the environment and the visual amenity associated with the facilities’ (Clause 1A.4)*

There is no evidence, from the GIPA documents provided, that any information has been made available to Council or the public that supports the principle 1(l), or that all relevant industry design guides for siting and designing telecommunications facilities have been observed.

- **Principle 1(m)** *Assess potential visual impact in alternative site assessments.*

**Not met** There is a Trig station location on an adjacent hill in the near vicinity, and other locations that have been identified by residents of the area, that would have much less of a



visual impact on the surrounding residents and on the vistas of the area (some of which the developer has previously acquired a license for) - Please also refer to line-of-sight coverage maps of Carwoola previously provided to Councillors.

**Principle 2:** Co-locate telecommunications facilities wherever practical

- **Principle 2(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*  
**Not met** - There are suitable facilities nearby, including an existing trig station, where this facility could be co located (Please also refer to the potential alternative sites modelled and previously provided to Councillors).
- **Principle 2(c)** – *Consider extending an existing tower as a practical co-location solution to new towers.*  
**Not met** - There is a telecommunication facility on the Kings Highway between Weetalabah and Burbong Station that may either house, or be extended to house, a Yless4U communication device. The developer has asserted that *there are no suitable towers nearby to co-locate*, however, no information as to why possible alternative sites and co -location are not possible, has actually been provided.
- **Principle 2(d)** – *d. Demonstrate that co-location is not practicable if choosing not to co-locate a facility.*  
**Not met** – There appears (from the GIPA documents provided), to have been no investigation as to the viability of other providers’ towers in the vicinity (e.g., Kings Highway).

**Principle 3:** Meet health standards for exposure to radio emissions

- **Principle 3(a)** *Design, install and operate a telecommunications facility so that maximum human exposure levels to radiofrequency emissions comply with RPS S-1.*  
**Not met** We are unaware of any such assessment of human exposure levels of radio-frequency emissions to surrounding residents having been undertaken, or the ARPANSA standard - Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (2021) being met (and other relevant standards like AS/NZS 2772.2:2016 Radiofrequency fields, Part 2: Principles and methods of measurement and computation – 3 kHz to 300 GHz’, published by Standards Australia)  
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 cumulative electro-magnetic emissions (EME).  
  
With the increases in frequencies associated with the modifications to the facility from point-to-point to a high-frequency communication hub, it would be reasonable to expect that an assessment of EMR emissions be conducted, for the health and safety of surrounding residents.
- **Principle 3(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 complies with ACMA safety limits and RPS S-1 (refer the discussion above on the applicability of this Code).*

**Not met** We are unaware of any report on human exposure levels of radio-frequency emissions to surrounding residents having been prepared for the modified telecommunications-hub with 9 antennas, and powered by mains electricity.

Irrespective of the findings of such a report, there is now a sizeable body of existing and emerging peer-reviewed scientific study on the effects of Radiofrequency Electromagnetic Radiation (and the adverse impacts on human health), sufficient to cause the residents surrounding the development site concern, both in terms of the closer proximity of the constructed development to residences, and its potential short-term and long-term health impacts on the health of family members and visitors.

The BioInitiative 2012 Report- Retrieved from (<http://bioinitiative.org>), for example, compiled by 29 independent scientists, looked at many issues including the effects of wireless radiofrequency radiation on brain development, and the effects on children and adolescents in wireless classrooms. Table 1-1 BioInitiative Report's Overall Conclusions (updated 2014), stated that:-

*"Overall, these new studies report abnormal gene transcription (Section 5); genotoxicity and single- and double-strand DNA damage (Section 6); stress proteins because of the fractal RF-antenna like nature of DNA (Section 7); chromatin condensation and loss of DNA repair capacity in human stem cells (Sections 6 and 15); reduction in free-radical scavengers, particularly melatonin (Sections 5, 9, 13, 14, 15, 16 and 17); neurotoxicity in humans and animals (Section 9); carcinogenicity in humans (Sections 11, 12, 13, 14, 15, 16 and 17); serious impacts on human and animal sperm morphology and function (Section 18); effects on the fetus, neonate and offspring (Section 18 and 19); effects on brain and cranial bone development in the offspring of animals that are exposed to cell phone radiation during pregnancy (Sections 5 and 18); and findings in autism spectrum disorders consistent with EMF/RFR exposure."* The September 2020 Updated Research Summaries, also confirm the trend that *"the great majority of studies report effects of low-intensity exposures to both ELF-EMF and RFR"*

We have provided references for some of the many, many scientific papers that support findings of adverse impacts of EME on human health in our original objection to Council for DA.2021.1628. (We can provide further research evidence, should this be required).

*Industry Code C564:2020* specifies that a Carrier should make available to the public, information regarding how they address RF EME health and safety issues in relation to their networks and where research reports on the health and safety impacts of radiofrequency infrastructure may be obtained. The Carrier should also keep informed via relevant scientific bodies, of the significance of the results of scientific investigations or studies on EME.

For the specific site of the Development, the Carrier should also provide information to Councils and members of the public on request, including a description of their radiofrequency infrastructure on the site; the radio frequency bands as per the ARPANSA EME Report format; an EME site compliance report or an EME site safety guide prepared by an independent NATA assessor; details of any RF hazard areas associated with their infrastructure and management practices to restrict access to RF hazard areas; the levels of exposure to EME emissions in accordance with the ARPANSA report; and coverage information of the area. Where the Carrier provides or quotes summaries of scientific information, the Carrier must reference the source of information.

Section 9.1.5 of *Industry Code C564:2020* also requires that Carriers not assert anything to the effect that the absence of scientific proof means that there is no possibility of risk arising from the operation of the Radiocommunications Infrastructure. I can only assume therefore, that statements like:-

- "There are zero safety concerns with a fixed wireless tower as we do not use ionising radiation.."
- "None of our equipment is ionising radiation and has no health effects attributed to it"
- there is "no radiation outside 1 metre of physical dish",
- "these sites run on solar power" and "use less power than your WiFi router that you have in your house",
- "most of the technology on the tower uses the same frequencies as your have in your WiFi router"
- "There is no danger to anyone from them",

would not satisfy this requirement.

[Quotes extracted from Yless4U emails to MV Law dated 17 & 26 August 2021, information flyer distributed to the Community -September 2021, and email from Yless4U to Council dated 21 December 2021- GIPA]

**Principle 4:** Minimise disturbance and risk, and maximise compliance

- **Principle 4(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.*

**Not met** – Obstacle Limitation Surfaces (OLS) Obstacle Control Chart can be provided on request.

Our property is located below the flight path to Canberra Airport for light aircraft and in the 25 years at this location, we have observed numerous aircraft at low elevations over our property, including for helicopter electricity line inspection and assessment, emergency services purposes, and defence testing and training (e.g., Tiger helicopter at very low levels over the ridge top location of the development site). We assume that a tower at this location, which exceeds the levels recommended by the Authorities, poses a serious safety risk to aircraft and surrounding residents.

Our communications with the relevant Department have confirmed that approval for the original 807m ADH has been revised to 812m ADH, however, a private survey of the height of the tower (this can be provided on request), puts the tower at 814m ADH, making it non-compliant with the Air Safety /Canberra Airport specifications of 812m ADH. In the GIPA documents we have received, we have been unable to locate any written post-construction report from either Yless4U or the Private Certifier, on the finished height of the tower as stipulated by the Department.

- **Principle 4(e)** *Erect the telecommunications facility wholly within the boundaries of a property as approved by the relevant landowner.*

**Not met** Whilst the developer appears to have obtained the landowners' approval to undertake development of a micropop (GIPA documents), there is no evidence to suggest

that the owners' approval was obtained for the modifications to the tower as constructed. Additionally, real estate agent signs have been displayed on the property that houses the tower for a number of months, and the property is due to be auctioned on the 5 March 2023. This constitutes a significant change in circumstances. The continued operation of the tower at the site will be contingent upon the negotiation of arrangements with a new owner (GIPA documents).

- **Principle 4 (f)** *Ensure all construction of a telecommunications facility accords with Managing Urban Stormwater: Soils and Construction – Volume 1 (Landcom 2004), or its replacement.*

**Not met** There have been significant earthworks undertaken on the site for electricity installation (which were not specified in the Development Application or approved by Council), over a distance of approximately 228 metres and at a square metreage in excess of the specifications in the Landcom stormwater and soil management document referenced above (imagery can be supplied on request). There is no evidence in the GIPA documents provided that soil, water or other factors impacting erosion, water quality and site degradation, have been appropriately considered and addressed (especially in light of the substantial rainfall over the past several months).

- **Principle 4(g)** *Mitigate obstruction or risks to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction.*

**Not met** – Please refer to ACCESS section of Bushfire commentary above.

- **Principle 4(k)** *Minimise disturbance to flora and fauna and restore land to a condition similar to its condition before the work was carried out*

**Not met** - The extensive unapproved earthworks undertaken by Yless4U for the connection of mains electricity on a critical biolink, could quite possibly result in irreparable degradation of habitat for land-dwelling species at that location, making site restoration in the short-term unlikely.

- **Principle 5(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.*

**Not met** There has been little, if any, consideration of flora and no consideration of fauna in either D.A 2021.1628 or in the construction of the modified tower as required by the legislation (addressed below).

**Principle 5:** Undertake an alternative site assessment for new mobile phone base stations (refer discussion above on the applicability of Code C564:2020)

- **Principle 5(a)** *Include adequate numbers of alternative sites in the alternative site assessment as a demonstration of good faith.*

We could not locate any evidence in the GIPA documents provided, of appropriate consideration and assessment of alternative sights. Additionally, information provided by residents of some the sites referenced by the developer in both the zooming meeting, and on the evening of the Council meeting of 25 May 2022, does not appear to align with representations made by developer.

Costs associated with site access were also raised as a consideration, however, it should be noted that the developments are funded by public grant money. Those of the community who do not wish to use the Yless4U service (e.g., those who are content with ADSL or Satellite providers), do not benefit from it. For many residents in our immediate area, the Yless4U service is not even an option because of the line-of-sight constraints of the hilly

terrain. Why then should they bear the costs and adverse impacts of a structure that is of absolutely no use to them?

In the case of the expenditure of public money, consideration should be given to all of the Community, including those who are concerned about the protection of the environment and threatened species, the maintenance and enhancement of critical biolinks, the adverse visual impacts on their C4 zoned landscapes, and the potential impacts of EME.

It is also worth noting that, in addition to requirements applicable to Telecommunications providers outlined in the documents referenced above, a Telco Supplier is also required to comply with the Competition and Consumer Act 2010 (Cth) including the Australian Consumer Law, and observe ACCC guides and Guidelines.

The *Telecommunications Consumer Protection Code* also commits to Consumers, that they will receive clear, accurate and relevant information on products and services from their Supplier; before during and after the point of sale (sale, in the case of the Yless4U service, presumably being the monthly subscription paid for the service). *Promotion of products and services by Suppliers will be clear, accurate and not misleading.*

**Appendix B of the Telecommunications Guidelines – Example of Set Standard Conditions of Consent -expected inclusions:**

- *Development in accordance with plans*- The development as constructed at 34 Powell Drive does not resemble the QPRC stamped plans, or comply with DA2021.1628 (and the associated conditions on consent), approved by Council.
- *Prior to commencement of works, Developer to submit to Council a report addressing all relevant conditions of the consent* – There have been significant departures from Conditions of Consent of DA.2021.1628 and the GIPA documents obtained contain no evidence of any report having been prepared addressing the relevant consent conditions.
- *A Construction Certificate to be deposited with Council at least 48 hours prior to commencement of work.* A notice dated 26 May 2022 (the day after the Council meeting), was issued by the Developer to adjoining residents advising them that construction had commenced, despite email correspondence from Yless4U to Council on 27 May and 7 June 2022 suggesting that the approved DA had not yet been uploaded to the planning portal by those dates (GIPA).

Significant unapproved earthworks, were also commenced on 22 June 2022, and brought to the attention of Council on that date; yet no compliance action was taken.

***We also note that a Council condition of consent for the development was that the structure not be occupied or used until an Occupation certificate is issued. The Private Certifier has confirmed that an Occupation Certificate has not been issued, yet the facility has been operating (and is advertised as operational on the Proponent's website), since July 2022.***

**CONSIDERATION OF THREATENED SPECIES AND HABITATS**

**As required by Section 4.15 EP&A Act 1979 and Section 7.3 Biodiversity Conservation Act 2016**

The *Biodiversity Study Findings Report- Queanbeyan Local Government Area- BES- July 2008 - Reference E1070065, commissioned by QPRC*, identifies the area between the Cuumbeun, Wanna Wanna and Stoney Creek Reserves (the specific location of the tower), as “critical to the

*maintenance of biolinks” (to those Reserves), and “thus the security of their conservation values in the long-term”, to retain connectivity to habitats (including for threatened species).*

*“Biolinks are essentially linkages between patches of vegetation including linear stretches of vegetation i.e. along roads or watercourses, or small, isolated clumps of trees. These linkages connect larger and important areas of habitat and provide opportunities for plants and animals to move and can be utilised as “stepping stones” by mobile fauna species moving between disjunct areas of habitat. In some cases isolated individual trees, may serve as a refuge for common and threatened species inhabiting or moving through open or highly disturbed areas and comprise important components of local biolinks. An aim of the Biodiversity Study was to identify regional and local “biolinks”. The biolinks were characterised by mostly continuous links of remnant native vegetation in moderate to good condition, however some biolinks had vegetation “gaps” or disruptions but could still be recognised as a biolink and with good land management practices, such as revegetation, their connectivity could be re-established. (QPRC Regional and Economic Strategy Review 2015-2031)*

**Despite:-**

- The Biodiversity Study Findings Report- Queanbeyan Local Government Area- BES- July 2008 -Reference E1070065 and section 4.4.4 of the QPRC Regional and Economic Strategy Review 2015-2031 identifying the site of the development as being part of a critical biolink,
- There being numerous threatened species either directly identified in this area (in the biodiversity report, in Landcare surveys, and through our own observations over a period of 25 years); or alternatively, the location being confirmed in the study as a suitable habitat for a number of these species,
- The recognition of the importance of the location to connectivity to habitats and therefore to its conservation value (Refer Biodiversity study readily available on the QPRC website and photo evidence from our property previously provided to Council),
- Numerous scientific findings on the adverse impacts of Electro-Magnetic Frequencies on wildlife, including their numbers and the impact of EME on the connectivity to habitats particularly wildlife with internal navigation system like birds, bats and insects (refer the highly relevant UNESCO Mt Nardi study and numerous others outlined in our original objection to DA.2021.1628 submitted to Council),

the original DA.2021.1628.A and the subsequent construction of the tower has completely disregarded the impact of the development on fauna, and in the significant excavation, flora, as required under **Section 4.15 EP&A Act 1979 and Section 7.3 Biodiversity Conservation Act 2016**

**ENVIRONMENTAL IMPACTS OBSERVED**

Disturbing research papers like the UNESCO Mt Nardi (NSW) report and others (including those referenced in our original objection to DA.2021.1628), evidencing the impact of high frequency electro-magnetic emissions (like microwaves) on wildlife and the connectivity to habitats, should leave Council concerned (as was the case in Byron Bay NSW), about the environmental implications of developments like the YLess4U tower at 34 Powell Drive, and their potential impacts on threatened species (and wildlife in general).

The specific location of QPRC’s newest telecommunication tower (which is now a Communications Hub), with its multiple frequencies, is less than 90 m from our boundary and right in the middle of the area between the Cuumbeun, Wanna Wanna and Stoney Creek Reserves, “critical to the maintenance of biolinks” (to those Reserves), and “thus the security of their conservation values in



the long-term “to retain connectivity to habitats (including for threatened species).

The importance of the location to habitat connectivity makes this an area of High Conservation Value (HCV). We have several resident and visiting threatened species on our property, including Gang-Gangs, and microbats in the warmer months. It concerns me that the Gang-gangs, that have fed in the wattles and eucalypts on the fence-line closest to the development (and drink from the horse trough), appear to have abandoned this location. The significant body of scientific evidence on the adverse impacts of Electro-Magnetic Frequencies on wildlife (including their numbers) appears to suggest that, amongst other things, an always-on 24/7/365, multi-directional, multiple high frequency microwave tower (82Ghz), may emit microwave radiation at potentially sufficient levels to create a divide blocking the species flow-through between the reserves. It is reasonable to be very concerned that the Gang-Gangs and their connectivity to important feeding and breeding habitats are being affected, particularly in light of Gang-Gang sightings reported by Landcare in and around Wanna Wanna Road (south of the tower) and Powell Drive (north of the tower). I assume that while Gang-Gangs mate for life, any offspring would search out other breeding colonies. The risk is that the Gang-Gangs (and other threatened species), might be effectively cut-off from other potential breeding colonies in the reserves by the high frequency microwave transmissions that can travel many kilometres.

Although I am not a scientist, we have observed some concerning other changes to our local ecosystems in the 7 months since the tower was erected, that may or may not be related to that particular change in the environment. We usually get very large flocks of yellow-tailed black cockatoos passing through our property each year (usually south-east to north-west), this year we could count the number that we have seen on one hand (and only on the northern boundary near Burbong). There also appear to be significantly fewer threatened scarlet and flame robins, migratory swallows, pardalotes, owls and microbats around the house. One bird of prey with the intention of hunting in the open area around the tower, was observed quickly retreating when it approached the westward path of the microwaves, with a series of very audible screeches.

Other changes include; no termite flushes this season, no bogong moths, no Christmas beetles, no small frogs feeding on insects from the house windows, and no microbat sightings. Coincidence?.....probably not!

## **2) LOCAL ENVIRONMENTAL PLANNING POLICIES (LEP)**

### **Queanbeyan-Palerang Regional Local Environmental Plan 2021**

- **The development of a telecommunications tower is not a permitted land use for QPRLEP, C4 land.**
- **General Aims of the QPRLEP have not been met including:**
  - (e) to keep and protect important habitat and biodiversity-** The land includes or comprises critical habitat, in that it is a critical biolink to feeding and breeding habitats (QPRC commissioned Biodiversity report).
  - (i) to protect important views and vistas-** The development can be seen from many properties in the vicinity and from roads, and adversely impacts views and vistas, and the C4- Environmental Living character of the area.

#### **Part 7 : Additional Local Provisions**

- **7.1 – Earthworks** -Substantial Earthworks were under taken and 7.1 has not been adhered to (refer consideration of the SEPP)
- **7.2 – Terrestrial Biodiversity** and the objectives of 7.2 have been disregarded despite the site having been identified as having High Conservation Value significance as a critical bio-link (refer- Consideration of Threatened Species- section above)

#### **QUEANBEYAN DCP 2012 – PART 1**

- **1.7.4 Site Analysis Plan** – DA.2021.1628 and DA.2021.1628.A do not provide adequate/appropriate information in relation to soils, utilities, plants, wildlife and climate to enable a fully informed assessment.
- **1.7.5 An Erosion and Sediment Control Plan** was not prepared for DA.2021.1628 or DA.2021.1628.A. It is reasonable to expect that Council would have insisted on such a plan given the extensive unapproved earthworks and the heavy rainfall over the Spring/summer period.

#### **QUEANBEYAN DCP 2012 – PART 2 Departures from Objectives**

- **2.7 Erosion and Sediment Control**
- **2.8.1 Guidelines for Bushfire Protection**
- **2.10.8 Flora and Fauna**
- **2.11 Airspace Operations**
- **2.12 Tree and Vegetation Management** – Environmental zoned Land- An ecologist report was not obtained prior to clearing of vegetation and logs undertaken on an environmentally sensitive habitat corridor (GIPA documents)

These have been addressed in more detail in earlier commentary

#### **QUEANBEYAN DCP 2012 – PART 5 RURAL AND ENVIRONMENTAL ZONES AND LARGE R5 LARGE LOT RESIDENTIAL ZONES – Departures from Objectives**

##### **Section 5.1.3 – Objectives (1), (2), (3), and (4)**

- The constructed tower is an incompatible land use for C4 land
- There has been inadequate assessment of the impact on flora, fauna and the natural environment
- The tower is visible from numerous properties and roads
- The constructed tower is a tall, imposing structure that creates visual dominance in the landscape and significantly impacts the rural character of the area.
- Significant earthworks, substantially greater than that for stumps or footing (as described by in the QPRC Delegated report DA.2021.1628), were undertaken for the installation of mains electricity (not included in the original community consultation or the specifications approved by Council)
- The principles of ecological sustainability are not met in relation to the tower development
- Biodiversity values have not been given due consideration
- The residents of Powell Drive/ Captains Flat Road (and others) appear to be bearing a disproportional, unwarranted cost in terms of amenity, for the service to Yless4U subscribers.

These have been addressed in more detail in earlier commentary.

## OTHER EP&A ACT 1979 - SECTION 4.15 EVALUATION CONSIDERATIONS

### ECOLOGICALLY SUSTAINABLE DEVELOPMENT

*Ecologically sustainable development can be achieved through the implementation of the following principles and programs—*

*(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

*In the application of the precautionary principle, public and private decisions should be guided by—*

*(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*

*(ii) an assessment of the risk-weighted consequences of various options,*

*b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations*

*(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,*

*(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services,....*

Given:

- the environmentally sensitive nature of the C4 locality, the “Biodiversity” rating, and the importance of the site as a critical bio-link for wildlife and threatened species,
- the structure now being a 24/7/365 always-on, multi-directional microwave hub, at massively higher frequencies (altered since community consultation, and differing from the requirements of the approved Development Application),
- the extensive scientific research on the impacts of EMR emissions on flora and fauna, including their numbers (refer Mt Nardi Study and others previously submitted to Council), and the unknown long-term effects on biodiversity and ecological integrity,
- the viable alternatives to fixed wireless technology that appear to offer attractive internet speeds as an alternative, and that do not require the construction of a 14-15m structure on environmentally sensitive land, and
- the short-term and long-term future appearing to be largely weighted towards a much greater reliance on satellite technology,

the development does not satisfy the principles of ecologically sustainable development.

## **SOCIAL AND ECONOMIC IMPACTS**

### **Social Impacts**

A number of the residents of the surrounding properties of the development site, have concerns relating to the potential health impacts of Electromagnetic Emissions. This imposed level of concern is both unjust and unreasonable.

### **Amenity**

Residents' amenity and enjoyment of their properties is being impacted by the telecommunications development.

Along with many other residents of this area, we live in the region because we appreciate the peace and tranquillity, the abundance of wildlife (including the threatened species we have the honour of hosting), the aesthetics of the trees and hills, and the fact that we are not surrounded by the structures associated with city living. Like other properties in our community, our location is such that, until the construction of the eyesore that is the tower, we couldn't see other buildings, ....home was always our sanctuary away from the madness of running a small business.

The situation post tower construction is that we have effectively been deprived of the use of half of our outdoor living areas, and are forced to look at an ugly structure that is at complete odds with the C4 character and landscape of the area.

### **Familial and Social Network**

Due to their perceptions of the dangers of EMF/RFR radiation and the "precautionary approach" to exposure adopted by many schools, there are friends and family members who are reluctant to have their children play in the vicinity of a microwave tower.

We on the adjoining property most impacted by the tower, enjoy entertaining and the company of family and friends. We want our visitors to be able enjoy the aspects of C4 Living, and to stay over should they choose, without the concern associated with the potential impacts of 24/7/365 EMF emissions.

As a result of the close proximity of the tower, and the growing body of peer-reviewed scientific evidence on the adverse health impacts of EMF radiation, the development is impacting both the number of visitors to our premises, and their comfort while visiting; impacting in turn, our amenity and appreciation of the property we have enjoyed for some 25 years.

### **Removal of surrounding residents' right to freedom of choice**

#### **• Choice of residential location**

This rural residential area, within easy driving distance of Queanbeyan, is zoned C4 for its environmental significance and terrestrial biodiversity. We chose to live in this part of regional Australia because of its impressive views and environmental characteristics, features and vegetation that provide habitat for many plant and bird species, and other wildlife. We and other affected residents, have the right to enjoy our properties and lifestyles without having to bear the consequences of inappropriate and incompatible development. This telecommunications development has been thrust upon us without our consent and against our will.

- **Choice on exposure to RF EME**

It is noted that users of a mobile phone or home wi-fi system can choose to turn them off when not in use. However, this telecommunications structure will emit EME at multiple high frequencies and will operate 24 hrs per day, 7 days a week, 365 days a year. The residents surrounding the location of telecommunications tower cannot choose to turn off such a facility, nor can they choose to limit their exposure to the Frequency emissions.

The forced exposure to EMR emissions that have the potential damage one's health against one's will, has now been identified as a potential human rights issue. The Advisors to an Appeal sent a letter on 15 October 2019, to the U.N. Human Rights Advisory Committee, commenting on its July 2019 Resolution, entitled "New and Emerging Digital Technologies and Human Rights"(it states);

"Wireless communication technologies are rapidly becoming an integral part of every economic sector. But there is a rapidly growing body of scientific evidence of harm to people, plants, animals, and microbes caused by exposure to these technologies.

It is our opinion that adverse health consequences of chronic and involuntary exposure of people to non-ionizing electromagnetic field sources are being ignored by national and international health organizations despite our repeated inquiries as well as inquiries made by many other concerned scientists, medical doctors and advocates."

This constitutes a clear violation of human rights, as defined by the United Nations:

*"Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education."*

(Retrieved from:-Welcome to **EMFscientist.org** ([www.emfscientist.org](http://www.emfscientist.org)))

#### **Economic Impact**

##### **Impact on Property Value**

The proposed development will likely negatively impact the property value of 58 Powell Drive.

The vast majority of property owners that choose to sell their property, are looking to maximise the return on their investment.

As is evident from the photos (presented in previous submissions to Council), from the front door and elsewhere on the property at 58 Powell Drive, the constructed tower unjustly impacts our home and outdoor living areas and is an overpowering feature on the landscape.

The likely expectation of any prospective purchaser of the surrounding properties, and in particular 58 Powell Drive where the proximity and visual amenity has the most significant impact, is that the purchase price will reflect:-

- I. reduced visual amenity
- II. public perception of the potential health impacts
- III. any costs associated with additional landscaping deemed necessary to attempt to obscure the structure and associated hardware, and
- IV. any costs associated with any EMR protection changes, features and measures the purchaser deems necessary to make to the property, to ensure their desired level of comfort within the premises.

There is supporting research evidence suggesting that telecommunication towers can in fact have a negative effect on property values and could reduce values by up to 20%. Some studies recognise

that technology that represents potential hazards to human health and safety may cause reduced property values due to the existence of “public fear” and “perceptions of hazards”. It is also worth noting that even a research study that could not establish a relationship between towers and house prices, provided for an exception, being “armed monopole towers located in residential areas due to such towers’ acute visual disamenity”. (References provided in the original objection)

#### **Taxpayer Funding**

This telecommunications development was undertaken using a publicly funded grant. There are many in our community who believe that our taxpayer funds should be more appropriately allocated to the protection of the environment and species (especially in areas of environmental significance), rather than to support a privately owned telecommunication service that only users of that network, and presumably the Telco Supplier (from an increase in subscriber base and subsequent subscription fees), will benefit from.

Why should our community bare the amenity and environmental costs, not to mention the expenditure of our hard-earned taxpayer funds, to support a Telco provider’s private business and corporate profit?

#### **SITE SUITABILITY**

In relation to ***the suitability of the site for the development***, the following points are noted:-

- Technology alternative options

We at 58 Powell Drive currently have a Telstra land line and a Telstra modem with Wi-Fi (which is optional and can be turned off), for the premises. Our business which relies very heavily on broadband and is located in Canberra, also requires us to conduct regular Zoom/Team meetings from our residence to accommodate the different time zones of overseas organisations. We also use Wi-Fi for watching movies and for some other internet activities, and are satisfied with the service we currently have. We, and others in the area, receive no benefit from the development.

It should also be noted that there are plans available with satellite-based providers which appear to offer attractive internet speeds as an alternative, and that do not require the construction of a fairly permanent 12-15m structure on environmentally sensitive land. Given the advances in Satcom technology, and issues associated with hilly terrains that can pose problems for technology like fixed wireless communication that requires line-of- sight, satellite appears to be the way of the future for challenging locations.

- Site Alternatives

We live in a region with numerous hills that are either privately owned, state owned or designated as Crown land. Some possess some form of existing easement and/or access. It has also been confirmed in both correspondence with the Telco provider and in the zoom community meeting conducted on Saturday 4th September, that viable alternative sites do exist for the proposed development, however, the reasons for why they were not pursued still remains unclear.

Private geospatial line-of sight modelling undertaken by the residents of 58 Powell Drive confirms the existence of alternative sites which will likely meet more of the regulatory



requirements, and have less impact in relation to proximity to residents, aesthetics, and the environment. Some of the hills are even higher in elevation than the proposed site, and as indicated in modelling, would provide more extensive coverage of the Carwoola region. One particular site already has some existing infrastructure and would more likely satisfy **Principle 2** of the NSW Telecommunications Facility Guideline Including Broadband.

Relevant Commonwealth, State legislation and local planning provisions are designed to provide us protection from inappropriate and incompatible development and to ensure the appropriate conservation of to the characteristics that provide the appeal of environmental C4 living, and attract residents to this region. It is difficult to comprehend the choice of 34 Powell Drive for a development that so significantly impacts surrounding residents and poses such a risk to the environment and threatened species.

- Public Safety

Given the risk to associated with bushfire, air space operations, and EME outlined in the above commentary, it appears that the development site may pose serious concerns for public safety.

#### PUBLIC INTEREST

Given the

- Significant departures from legislative requirements, planning instruments and guidelines, and the conditions of consent,
- concerns for public safety,
- inappropriate and incompatible land use for such a development,
- closer proximity of the development to surrounding residents,
- exacerbated impacts that the development now has on visual amenity and the character of the area,
- potentially irreparable environmental damage from activities on the site,
- potential adverse impacts on threatened species and their numbers now, and into the future
- identified social and economic impacts,
- the existence of alternative sites, and
- the existence of alternative technology options,

the original and modified development is considered to **not** be in the public interest.

Further, in the instance that a party is in receipt of public funds either by way of a grant or other funding model to undertake projects or activities, there ought to be a reasonable expectation of transparency, and that the recipient party's activities will be subject to public scrutiny. It is also reasonable for the public to expect that the activities will be conducted in accordance with industry standards of professional conduct, funding terms and conditions, legislative requirements, planning conditions and guidelines, and applicable licensing requirements; and that reasonable oversight will be provided by relevant agencies, including QPRC.

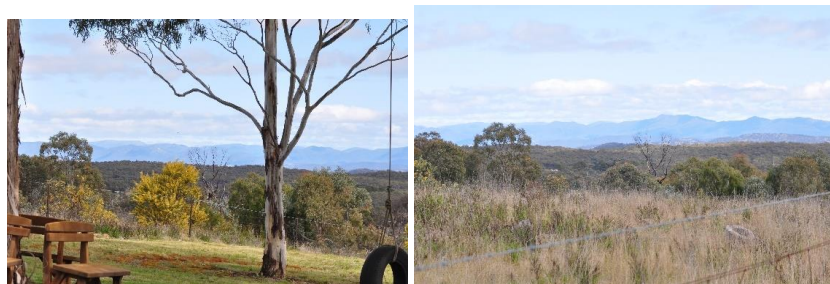
It is in the Public Interest to ensure that the public's hard-earned funds are appropriately acquitted in accordance with relevant legislation and guidelines.

Given the apparent disregard by for the legislative requirements, planning instruments and guidelines, the DA process, the QPRC conditions of consent for DA.221.1628 and other obligations applicable to telco providers, I firmly believe that Council has no other choice but to refuse the

Application to Modify Development Consent- DA. 2021.1628.A., for the many reasons outlined above.

As a point of interest, I have attached excerpts from the Gundaroo Gazette to highlight other similar issues encountered in another LGA.

If the DA non-compliances cannot be rectified, the tower should be removed.

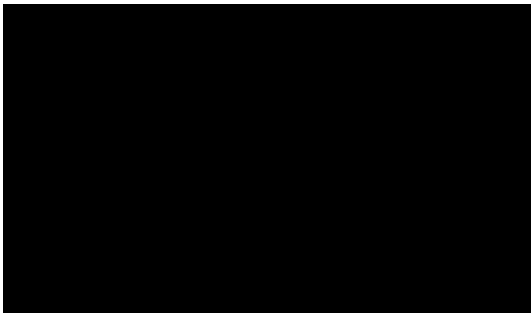


**The views and vistas that have been lost**



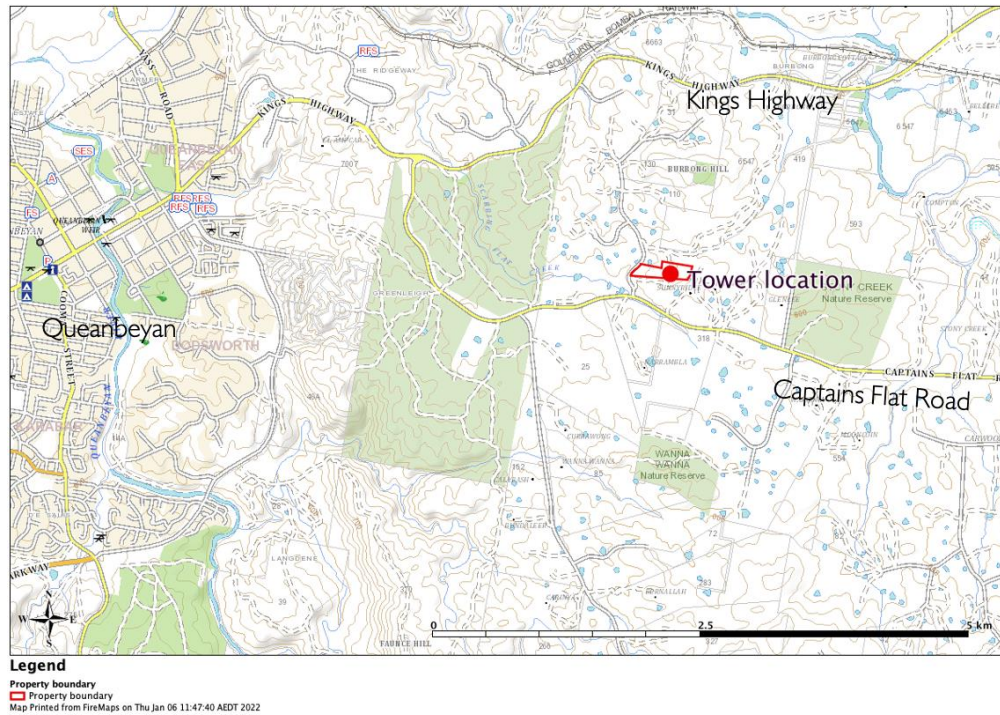
**QPRC's latest symbol of Biodiversity**

Yours sincerely,



## Attachment A

**Figure 1 - Location of the Tower in relation to the Cuumbeun, Wanna Wanna and Stoney Creek Reserves**



As highlighted in the QPRC commissioned Biodiversity study (*Biodiversity Study Findings Report-Queanbeyan Local Government Area- BES- July 2008 -Reference E1070065*), the area between the Cuumbeun, Wanna Wanna and Stoney Creek Reserves (the specific location of the tower), has been identified as “critical to the maintenance of biolinks” (to those Reserves), and “thus the security of their conservation values in the long-term”, to retain connectivity to habitats (including for threatened species).



**Figure 2 - Aspect of the Tower in relation to our property (pictured)**



*Mackenzie Davey Report (2022)- 34 Powell Drive, Carwoola NSW*

We, on the neighbouring property [REDACTED], have resident and visiting threatened species on our property, including squirrel-gliders, a pair of Gang-Gangs that have returned for a number of years (and usually feed in the wattles on the fence-line closest to the development, and water themselves in the horse trough), and microbats in the warmer months.

**Figure 3 – Photo Evidence of Threatened Species on our property - ( Gang Gang pictured)**

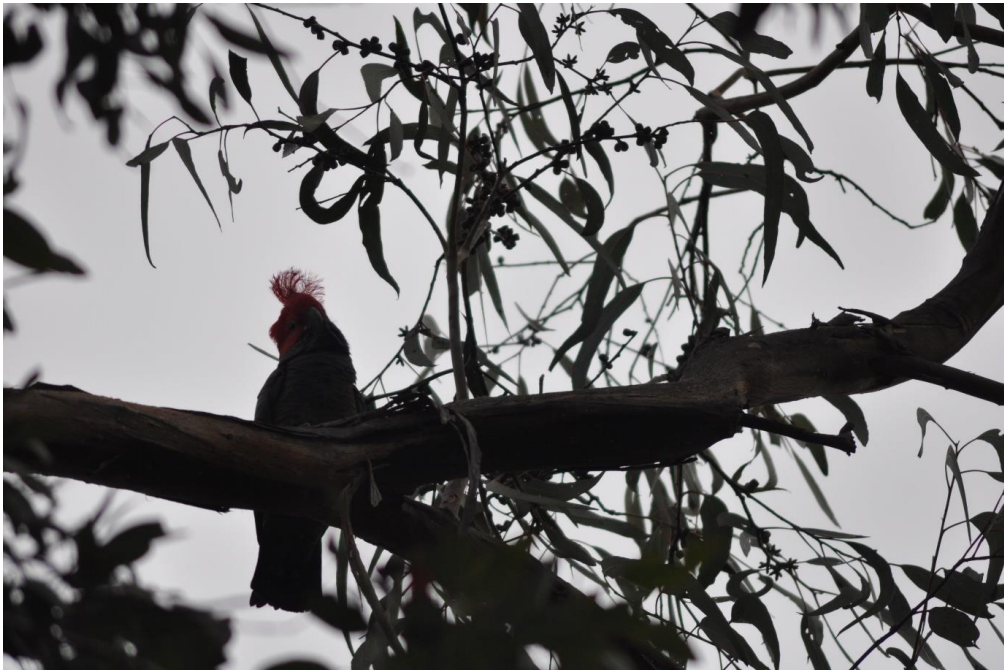


Photo [REDACTED] taken on northern boundary [REDACTED]

We note that other species including flame and scarlet robins, and the more nocturnal squirrel glider and microbats, are more difficult to photograph, but have been observed.

Numerous other threatened species have been either directly identified in the vicinity, or alternatively, the location being confirmed as a suitable habitat for a number of these species. The importance of the location to the connectivity to habitats (Refer QPRC commissioned Biodiversity study) makes this an area of High Conservation Value (HCV).

There is significant scientific evidence (that was provided to Council prior to their assessment), on the adverse impacts of Electro-Magnetic Frequencies on wildlife, including their numbers. An always-on 24/7/365, multi-directional, multiple high frequency microwave tower (82Ghz), will likely emit microwave radiation sufficient to create a divide blocking the species flow-through between the reserves, particularly in wildlife with internal navigation systems like birds, bats and insects (refer Mt Nardi report for UNESCO and others identified below, prior to Council's assessment).

**The references below are a sample of the research studies that identify impacts of Electro-Magnetic Frequencies on flora and fauna:**

"in plants reduced growth, increased infection and physiological and morphological changes (Balodis et al. 1996, Haggerty 2010, Waldmann-Selsam et al. 2016, Havas and Symington 2016, Vian et al. 2016, Halgamuge 2017);

in birds, aggressive behavior, impaired reproduction and interference with migration (Southern 1975, Larkin and Sutherland 1977, Balmori 2004, Balmori and Hallberg 2007, Everaert and Bauwens 2007, Fernie et al. 2010, Engels et al. 2015, Wiltchko et al. 2015);

in livestock, especially dairy cows, reduced productivity, impaired reproduction, and sudden death (Burchard et al. 1996, Loscher and Kas 1998, Hillman et al. 2013, Stetzer et al. 2016);

in rodents, increased cancer risk in three long-term studies (Chou et al 1992, NTP 2018, Falcioni et al. 2019);

in amphibians (Balmori 2006, Balmori 2010) and insects (Cucurachi et al. 2013), deformities and population decline; and

in honey bees, aggressive behavior, reduced learning, reduced productivity, swarming and abandoning hives (Harst et al. 2006, Pattezhay 2009, Warnke 2009, Favre 2011, Kumar et al. 2011, Sahib 2011, Shepherd et al. 2019)."

**[Reference: Selected Studies that Reported Adverse Effects of Electromagnetic Field (EMF) Exposure on Plants, Animals and Insects]**

Excerpted from a **letter to the United Nations Environmental Programme**

written by the Advisors to the **International EMF Scientist Appeal**, June 25, 2019 – Retrieved from:- <https://www.saferemr.com/2016/07/effects-of-wireless-radiation-on-birds.html> ]

One other study conducted (Mt Nardi), also indicates adverse effects on wildlife arising from EME radiation.

[<https://ehtrust.org/science/bees-butterflies-wildlife-research-electromagnetic-fields-environment/>]

Beason R, Semm P, (November 2002) Responses of neurons to an

amplitude modulated microwave stimulus, Neurosci Lett 2002 Nov 29;333(3):175-8. [H+]

**Figure 3 and 4 – Physical Degradation of the Site from Unapproved Earthworks**



*All Homes Advertisement for Sale of 34 Powell Drive, Carwoola*



24 February 2023

Ms Rebecca Ryan  
Chief Executive Officer  
Queanbeyan Palerang Regional Council  
PO Box 90  
QUEANBEYAN NSW 2620

Dear Ms Ryan,

**Re: Objection to Modification of Development Application No DA.2021.1628.A for Construction of a Telecommunications Facility at 34 Powell Drive (Lot 33 DP 7745718), Carwoola NSW**

[REDACTED] has been engaged by the owners and residents of [REDACTED] to review DA.2021.1628.A and prepare a letter of objection to the proposed telecommunications facility at 34 Powell Drive Carwoola (**the site**).

The site is currently improved with a single dwelling and associated structures and a telecommunications facility under construction following approval of DA2021.1628, however we note the facility has not been constructed in accordance with the approved DA. The site is zoned C4 Environmental Living, pursuant to the Queanbeyan-Palerang Regional Local Environmental Plan 2022 (**the QPRLEP**).

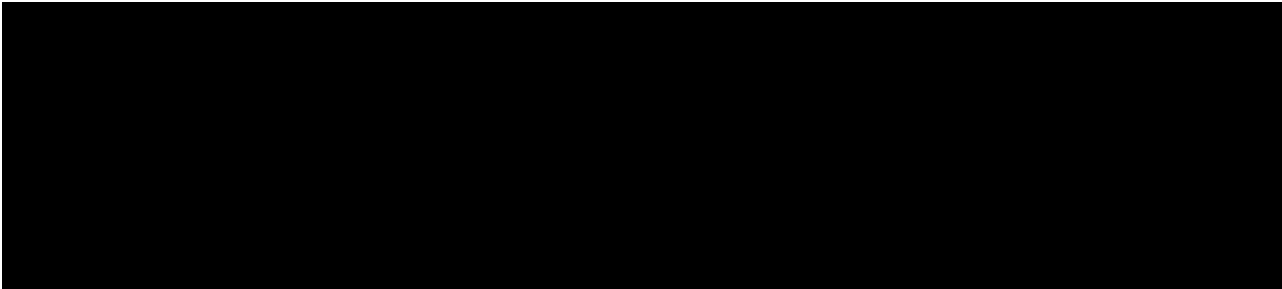
DA.2021.1628.A seeks Council's consent for the construction of a Telecommunications Facility, under Part 4 of the Environmental Planning and Assessment Act 1979 (**the EP&A Act 1979**). The modified DA proposes the following:

1. Installation of a telecommunications facility (specifically a microcell installation) including 12m high tower (however the application indicates the tower is no more than 15m in height),
2. Installation of a road side cabinet; and
3. Installation of a solar array.

Subsequent to our response regarding the original Development Application dated 14 December 2021, our review of the DA modification submission continues to identify inconsistencies and deficiencies in the supporting commentary, proforma drawings and documentation. Correspondence from the owners of 58 Powell Drive to QPRC on 21 June 2022 and 25 August 2022 identified that the constructed facility has significantly departed from the approved proposal.

Council has stated that non-compliance of the proposal for issues such as height, location, colour, number of aerials and unauthorised earthworks are matters for further investigation. We consider however that the submission of the DA modification provides further opportunity for scrutiny of the proposal in relation to biodiversity impacts, bushfire risk and performance against the relevant SEPPs and LEP.

It is maintained that the DA modification as submitted fails to adequately address the matters raised in our previous objection to the original DA dated 14 December 2021. The application continues to constitute an incomplete application and the development as constructed does not comply with the approved proposal.



We therefore contend that the DA modification in its current form should not be approved by Council, as a full and proper assessment cannot be completed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (the EP&A Act).

The following sections, of this letter outlines the reasons for objection and provides a brief conclusion. We request that Capital Region Planning and our clients (owners and residents of 58 Powell Drive, Carwoola) be kept informed of the DA modification assessment and determination process including any referral of the DA to a Council meeting (if required), along with the opportunity to review a revised DA modification application.

We hereby submit our grounds for objection to the modification of DA.2021.1628.A for the construction of a telecommunication facility at DA at 34 Powell Drive Carwoola as follows:

### 1 Incomplete and Inaccurate DA Submission

1.1 Our review of the DA submission indicates that the application is incomplete and therefore Council is unable to complete a full and proper assessment of the application under Section 4.15 of the Environmental Planning and Assessment Act 1979 (**the EP&A Act**). The DA modification is **again** considered incomplete for the following reasons:

- a) Drawing identified as sheet 1 of 3 titled 12m 4SF AFS350 15t SJ revision A is again provided and continues to indicate that the tower will have a height of 12013.5mm (12.01 metres). Contradicting this information is the document titled YLess4U Planning Pathway for: POWELL which states that the tower will have a height of no greater than 15 metres. It is our understanding that the tower was approved by Council at 12 metres.
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  - Fails to accurately detail and describe the proposed development in its entirety and its potential impacts;
  - Fails to detail how much excavation or land clearing has been completed as part of the development and its impacts along with the exact location of all associated structures, noting the development is proximate to existing trees and/or vegetation;
  - Fails to address all relevant provisions under *SEPP (Transport and Infrastructure) 2021 (the SEPP)*;
  - Fails to address the NSW Telecommunications Facilities Guideline Including Broadband October 2022 which is a requirement under the SEPP;
  - Fails to address all relevant provisions under the *Queanbeyan-Palerang Regional Local Environmental Plan 2022 (the QPRLEP)*, in particular the site's zoning and environmental affectations including Riparian Lands and Watercourses and Terrestrial Biodiversity matters;
  - Fails to consider and address the relevant parts of the *Queanbeyan Development Control Plan 2012*;
  - Fails to identify the likely impacts of the development (including environmental impacts on the natural environment, and social and economic impacts in the locality);
  - Fails to demonstrate that the development is suitable for the site or provide adequate investigation of alternatives, nor consider if the development is in the public interest.
- c) The submission of a complete SEE is required for all DAs and modifications as outlined under Division 1 of Part 3 and 5 of the Environmental Planning and Assessment Regulations 2021 (**the Regulations**), accordingly, the DA cannot be fully assessed nor can the DA be approved.



1.2 The DA modification application form states that the proposed modification is to correct a minor error, misdescription or miscalculation made in the consent being the measurements listed on the surveyor's report, which relates to some of the concerns we have previously raised in correspondence to Mr MJ Thompson, Portfolio General Manager at Queanbeyan Palerang Regional Council dated 25 August 2022.

1.3 The DA modification fails however to address other concerns raised in our original objection to the DA and in subsequent letters to QPRC in relation to the departures from the approval in the construction of the installation.

1.4 The drawings resubmitted with the DA modification prepared by ARE Telcom & Wind are unchanged and remain proforma drawings which do not correlate with the site conditions and characteristics and the installation as constructed.

1.5 The documentation titled IP66 19" Field Cabinet remains a proforma and has not been updated, and does not correlate with the site plan submitted with the DA. Again, the associated services with the cabinet are not included such as any connections, conduits and excavation associated with the tower. As stated in the letter to Mr Thompson dated 25 August 2022, the extent of excavations for the installation have been major and these have not been undertaken in an environmentally sensitive manner.

1.6 Based on our review of the DA modification, Capital Region Planning maintain that the following issues remain inadequately investigated in the DA modification submission:

- (a) Full set of DA drawings completed in accordance with Council's DA submission requirements;
- (b) Consideration of the extent of cut and fill associated with the works and potential impact on trees and vegetation in an environmentally sensitive area;
- (c) The lack of any meaningful visual impact assessment from the proposed tower and associated facilities;
- (d) Terrestrial biodiversity and riparian corridor – ecological and environmental reports;
- (e) Bushfire affectations – reports detailing implications for the site, development and any implications for surrounding properties; and
- (f) Proper SEE prepared in accordance with the requirements of the EP&A Regulations.

1.7 Accordingly, we are of the view that Council must refuse the DA modification in its current form under the provisions of the EP&A Act.

## **2 Fails to address the site's C4 Environmental Living zoning objectives and Aims of Plan in the QPRLEP**


2.1 We reiterate the C4 zone objectives below in relation to this modification proposal.

2.2 We continue to maintain that under objective three of the C4 zone objectives, the proposed development has failed to have regard to and recognise the desired bushland character by situating a high impact telecommunication facility in an C4 Environmental Living zone and in a highly prominent location.

### ***Zone C4 Environmental Living***

#### ***1 Objectives of zone***

- *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 encourage development that is visually compatible with the landscape.*
- *To minimise the impact of development on the natural environment.*
- *To ensure development does not unreasonably increase demand for public services or public facilities.*



2.4 This telecommunication facility is located directly in my client's vista from their home and made more prominent because it is on a hill where trees have been cleared around it. This is the main impact on my client and there are various more suitable locations on this site for such a tower. This tower remains in the most visually obtrusive place possible for my client, and the impact of the facility under construction remains greater than that of the approved installation due to the proponent's departures from the approved design.

2.5 Having regard to clause 1.2 Aims of Plan it is submitted that the telecommunication facility with a height of up to 15 metres is contrary to subclause 2 (e) and (f) which aims to protect the scenic quality, views and vistas, and maintain the unique identity and country character of Queanbeyan.

**3 State Environmental Planning Policy (Transport and Infrastructure) 2021 and NSW Telecommunications Facilities Guidelines including Broadband (October 2022)**

3.1 The proposed high impact telecommunications facility development must address the provisions of SEPP (Transport and Infrastructure), specifically Division 21 Telecommunication and other communication facilities:

**2.143 Development permitted with consent**

*(1) 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.*

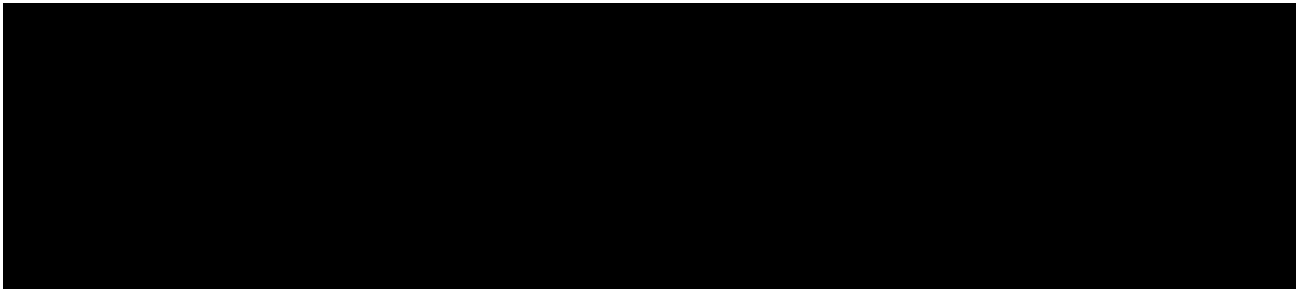
*(2) Before determining a development application for development to which this section applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.*

3.2 The SEE submitted with the DA modification fails to address the provisions of SEPP (Transport and Infrastructure) and the guidelines referenced under clause 2.143. These are significant omissions demonstrating that the DA modification has neither considered nor addressed the provisions of the SEPP and detailed guidelines in the preparation and submission of the DA modification.

3.3 The *NSW Telecommunications Facility Guideline Including Broadband* dated October 2022 (**the Guideline**) details a range of matters which must be addressed in the submission of a DA and assessment for a Telecommunication Facility. Section 3 Principles outlines the key considerations, and our review indicates that the DA modification again fails to address multiple requirements under each of the principles. The reasons for this are set out below.

*(a) Principle 1: Design and site telecommunication facilities to minimise visual impact.* The proposed development fails to address principle 1 subclauses (d), (e), (g) and (h) for the following reasons:

- Matter (d) the proposed ancillary facilities are still not detailed on the site plans and the DA does not demonstrate how these facilities are screened and integrated into the telecommunications facility, to reduce its visibility. .
- Matters (e) and (g) are still not addressed as the telecommunications facility must be located and designed to respond appropriately to the site's environmental landscape setting. Our clients' dwelling at 58 Powell Drive is situated in close proximity to the proposed telecommunications facility and the 14-15-metre height of the tower and associated facilities makes the tower readily visible and diminishes the landscape setting.
- Furthermore, the facility as constructed is not for a point-to-point tower as the original DA suggested (and council approved), but rather intended to be a hub site, comprising multiple dishes and relay infrastructure and greater visual bulk than the original proposal.

- 
- Matter (h) the site plan submitted with the DA modification indicates that the telecommunications facility and associated structures are proximate to several existing trees and/or vegetation.

(b) *Principle 2: Co-locate telecommunication facilities wherever practical.* The DA fails to address subclauses (b), (d) and (e) for the following reasons:

- 
- Matter (b) the telecommunications facility has not been co-located or attached to existing structures to minimise the proliferation of telecommunication facilities and unnecessary clutter. We note that there is a telecommunications facility on the Kings Highway between Weetalabah and Burbong Station that would appear to be a more suitable location for such an installation.
  - The DA and DA modification fail to address matter (d) and (e) as the proponent has failed to demonstrate that existing towers in Carwoola or comparable locations cannot be extended to accommodate the facility and the proponent must demonstrate that co-location is not practicable by providing specific coverage objectives and negotiations with co-located providers.
  - The DA modification fails to demonstrate that the cumulative levels of radio frequency emissions are within the maximum human exposure levels set out in RPS S-1.

(c) *Principle 3: Meet health standards for exposure to radio emissions.* The DA modification fails to address subclauses (a) and (b) as no information has been provided with the application dealing with radiofrequency emissions to comply with the Radiation Protection Standard. An EME Environmental Report has still not been provided and is required from the proponent to address the Mobile Phone Network Code in terms of design, siting of facilities and notifications.

(d) *Principle 4: Minimise disturbance and risk, and maximise compliance.* The DA fails to address subclauses (a), (f), (k) and (l) for the following reasons:

- According to a private survey commissioned by our clients, the siting and height not only penetrates the obstacle limitation surface (OLS), it exceeds the already revised height of 812 AHD, approved by the relevant Authorities.
- The DA modification fails to demonstrate how the extensive excavation undertaken accords with *Managing Urban Stormwater: Soils and Construction – Volume 1 (Landcom 2004)*, or subclause (k).
- The DA modification fails to identify potential impacts on threatened species under subclause (l). We note that the site is mapped for terrestrial biodiversity characteristics, and the QPRC commissioned *Biodiversity Study Findings Report- Queanbeyan Local Government Area- BES- July 2008-Reference E1070065*, published on the QPRC website, identifies the location as a critical bio-link.

#### 4 Contrary to Part 5 Environmental Zones in the Queanbeyan Development Control Plan 2012

4.1 Part 5 of the Queanbeyan Development Control Plan 2012 (**the DCP**) applies to all development zoned C4 Environmental Living under the QPRLEP. Part 5 contains several sections, objectives and controls which have not been addressed as part of the DA modification submission, these are discussed below.

4.2 Section 5.1.3 Objectives applicable to the Rural and Environmental Zones the DA modification fails to address subsections (1) and (2) as the telecommunications facility fails to maintain the rural character of the locality and will result in disturbance on the landscape and environment generally. In addition, the Telecommunication Facility land use is not ecologically sustainable and has failed to address the environmental characteristics of the site and locality.



4.3 The DA modification fails to address section 5.2.3 Management of Flora and Fauna which requires the submission of a preliminary flora and fauna report which determines if the proposed development is likely to significantly access threatened species, populations or ecological communities or their habitats.

4.4 The DA modification fails to address section 5.2.4 Aboriginal Heritage which requires the application to demonstrate that the development will not adversely impact Aboriginal objects and places in NSW, noting no investigations have been completed nor provided with the DA modification.

4.5 The DA modification fails to address section 5.2.5 Bush Fire Management which requires a bush fire report to accompany the DA modification submission noting the affectations over the site and potential implications for surrounding land.

#### **5 Failure to address Part 2 All Zones of the Queanbeyan Development Control Plan 2012**

5.1 Part 2 All Zones of the DCP applies to all development within QPRC. Part 2 contains a number of sections, objectives and controls which have not been addressed as part of the DA modification submission, these are discussed below.

5.3 The DA modification fails to address section 2.6 Landscaping which requires the preparation and submission of landscape plans to ensure new development in the LGA reinforces the natural environment and quality of the environment for the broader community.

#### **6 Visual and view impacts**

6.1 The SEE fails to provide any consideration or assessment on the visual or view loss impacts that the 14-15-metre-high telecommunications facility will create. As discussed, there is significant visual impact on the existing dwelling at 58 Powell Drive. In this regard, the SEE and DA is patently deficient, and the consent authority does not have enough information to make a genuine assessment.

6.2 The development has resulted in visual impacts and view loss for residents at 58 Powell Drive. The development is particularly prominent and of a greater scale and impact than the original DA, and yet the modification SEE pays no regard to these matters.

6.3 In our view, Council should insist that the applicant prepare a detailed visual impact assessment which considers the constructed high impact telecommunications facility in respect of which modification approval is sought. This assessment should pay particular regard to:

- (a) the proposed development when viewed from 58 Powell Drive; and
- (b) the need to maintain the environmental setting of both sites' C4 Environmental Living zoning, vistas and view through the Site from adjoining properties.

#### **7 Departures from the approved DA**

7.1 As noted in correspondence to QPRC dated 21 June and 25 August 2022, the subject structure and associated works have not been installed in accordance with the approved proposal under DA2021.1628 and the proposed modification does not appear to adequately address the inconsistencies with the original approval with respect to:

- a) Departure from approved materiality and appearance of the tower
- b) Departures from approved height and location of the tower
- c) Significant increases in the operational capacity and visual impact of the tower due to additional dishes and relay infrastructure.



7.2 These departures are contrary to the requirements of section 99 of the *Environment Planning and Assessment Regulation 2021* for applications for modification of development consent.

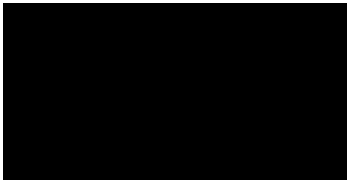
7.3 Given the proponent's clear disregard for adhering to the approved DA proposal and unacceptable construction impacts on adjoining residents as we have previously advised to Council and although these matters have been brought to the attention of the Council certifier, we are not convinced that the proponent will conform to the requirements of the original DA, nor that the modification application accurately reflects the currently constructed facility.

#### **8 Conclusion**

8.1 For the reasons set out above, in our view the DA modification should be refused and the proponent immediately be required to rectify the developments' inconsistencies with the original DA approval.

Should you have any queries regarding this matter please do not hesitate to contact myself on [REDACTED]

Yours sincerely,



This letter is for the use only of the party to whom it is addressed and for no other parties. No responsibility is accepted to any third party who may use or rely on the whole or any part of the content of this letter.

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24 February 2023

Ms Rebecca Ryan  
Chief Executive Officer  
Queanbeyan Palerang Regional Council  
PO Box 90  
QUEANBEYAN NSW 2620

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[REDACTED]

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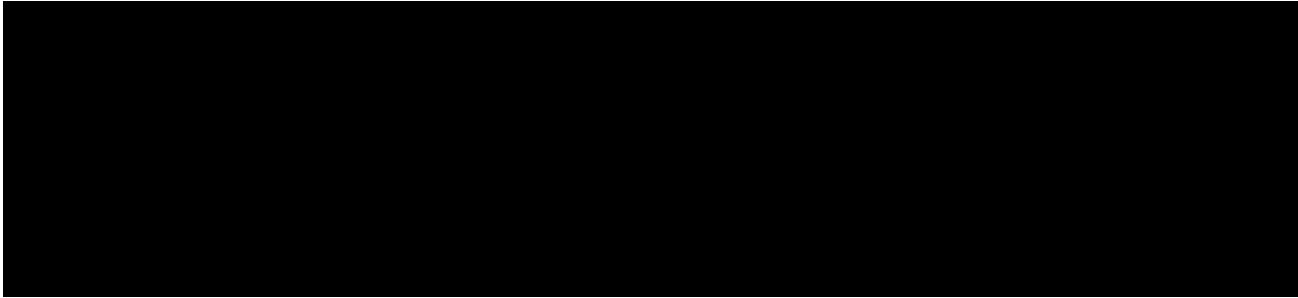
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- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To encourage development that is visually compatible with the landscape.*
- *To minimise the impact of development on the natural environment.*
- *To ensure development does not unreasonably increase demand for public services or public facilities.*



2.4 This telecommunication facility is located directly in my client's vista from their home and made more prominent because it is on a hill where trees have been cleared around it. This is the main impact on my client and there are various more suitable locations on this site for such a tower. This tower remains in the most visually obtrusive place possible for my client, and the impact of the facility under construction remains greater than that of the approved installation due to the proponent's departures from the approved design.

2.5 Having regard to clause 1.2 Aims of Plan it is submitted that the telecommunication facility with a height of up to 15 metres is contrary to subclause 2 (e) and (f) which aims to protect the scenic quality, views and vistas, and maintain the unique identity and country character of Queanbeyan.

**3 State Environmental Planning Policy (Transport and Infrastructure) 2021 and NSW Telecommunications Facilities Guidelines including Broadband (October 2022)**

3.1 The proposed high impact telecommunications facility development must address the provisions of SEPP (Transport and Infrastructure), specifically Division 21 Telecommunication and other communication facilities:

**2.143 Development permitted with consent**

*(1) 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.*

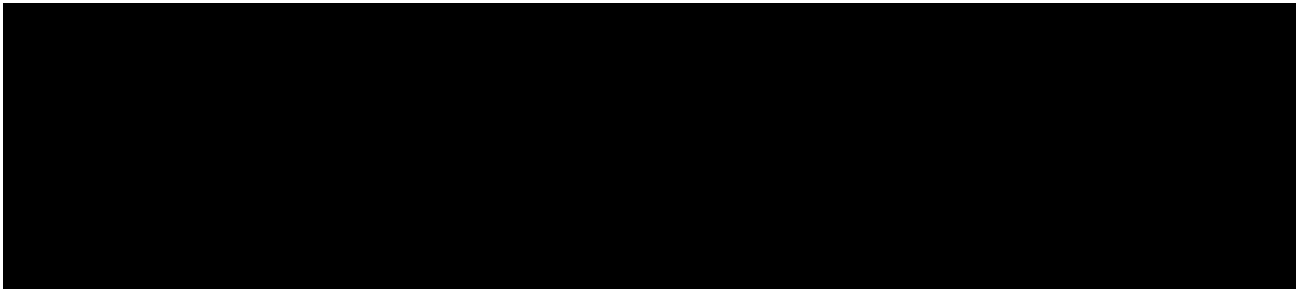
*(2) Before determining a development application for development to which this section applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.*

3.2 The SEE submitted with the DA modification fails to address the provisions of SEPP (Transport and Infrastructure) and the guidelines referenced under clause 2.143. These are significant omissions demonstrating that the DA modification has neither considered nor addressed the provisions of the SEPP and detailed guidelines in the preparation and submission of the DA modification.

3.3 The *NSW Telecommunications Facility Guideline Including Broadband* dated October 2022 (**the Guideline**) details a range of matters which must be addressed in the submission of a DA and assessment for a Telecommunication Facility. Section 3 Principles outlines the key considerations, and our review indicates that the DA modification again fails to address multiple requirements under each of the principles. The reasons for this are set out below.

*(a) Principle 1: Design and site telecommunication facilities to minimise visual impact.* The proposed development fails to address principle 1 subclauses (d), (e), (g) and (h) for the following reasons:

- Matter (d) the proposed ancillary facilities are still not detailed on the site plans and the DA does not demonstrate how these facilities are screened and integrated into the telecommunications facility, to reduce its visibility. .
- Matters (e) and (g) are still not addressed as the telecommunications facility must be located and designed to respond appropriately to the site's environmental landscape setting. Our clients' dwelling at 58 Powell Drive is situated in close proximity to the proposed telecommunications facility and the 14-15-metre height of the tower and associated facilities makes the tower readily visible and diminishes the landscape setting.
- Furthermore, the facility as constructed is not for a point-to-point tower as the original DA suggested (and council approved), but rather intended to be a hub site, comprising multiple dishes and relay infrastructure and greater visual bulk than the original proposal.

- 
- Matter (h) the site plan submitted with the DA modification indicates that the telecommunications facility and associated structures are proximate to several existing trees and/or vegetation.

(b) *Principle 2: Co-locate telecommunication facilities wherever practical.* The DA fails to address subclauses (b), (d) and (e) for the following reasons:

- 
- Matter (b) the telecommunications facility has not been co-located or attached to existing structures to minimise the proliferation of telecommunication facilities and unnecessary clutter. We note that there is a telecommunications facility on the Kings Highway between Weetalabah and Burbong Station that would appear to be a more suitable location for such an installation.
  - The DA and DA modification fail to address matter (d) and (e) as the proponent has failed to demonstrate that existing towers in Carwoola or comparable locations cannot be extended to accommodate the facility and the proponent must demonstrate that co-location is not practicable by providing specific coverage objectives and negotiations with co-located providers.
  - The DA modification fails to demonstrate that the cumulative levels of radio frequency emissions are within the maximum human exposure levels set out in RPS S-1.

(c) *Principle 3: Meet health standards for exposure to radio emissions.* The DA modification fails to address subclauses (a) and (b) as no information has been provided with the application dealing with radiofrequency emissions to comply with the Radiation Protection Standard. An EME Environmental Report has still not been provided and is required from the proponent to address the Mobile Phone Network Code in terms of design, siting of facilities and notifications.

(d) *Principle 4: Minimise disturbance and risk, and maximise compliance.* The DA fails to address subclauses (a), (f), (k) and (l) for the following reasons:

- According to a private survey commissioned by our clients, the siting and height not only penetrates the obstacle limitation surface (OLS), it exceeds the already revised height of 812 AHD, approved by the relevant Authorities.
- The DA modification fails to demonstrate how the extensive excavation undertaken accords with *Managing Urban Stormwater: Soils and Construction – Volume 1 (Landcom 2004)*, or subclause (k).
- The DA modification fails to identify potential impacts on threatened species under subclause (l). We note that the site is mapped for terrestrial biodiversity characteristics, and the QPRC commissioned *Biodiversity Study Findings Report- Queanbeyan Local Government Area- BES- July 2008-Reference E1070065*, published on the QPRC website, identifies the location as a critical bio-link.

#### **4 Contrary to Part 5 Environmental Zones in the Queanbeyan Development Control Plan 2012**

4.1 Part 5 of the Queanbeyan Development Control Plan 2012 (**the DCP**) applies to all development zoned C4 Environmental Living under the QPRLEP. Part 5 contains several sections, objectives and controls which have not been addressed as part of the DA modification submission, these are discussed below.

4.2 Section 5.1.3 Objectives applicable to the Rural and Environmental Zones the DA modification fails to address subsections (1) and (2) as the telecommunications facility fails to maintain the rural character of the locality and will result in disturbance on the landscape and environment generally. In addition, the Telecommunication Facility land use is not ecologically sustainable and has failed to address the environmental characteristics of the site and locality.



4.3 The DA modification fails to address section 5.2.3 Management of Flora and Fauna which requires the submission of a preliminary flora and fauna report which determines if the proposed development is likely to significantly access threatened species, populations or ecological communities or their habitats.

4.4 The DA modification fails to address section 5.2.4 Aboriginal Heritage which requires the application to demonstrate that the development will not adversely impact Aboriginal objects and places in NSW, noting no investigations have been completed nor provided with the DA modification.

4.5 The DA modification fails to address section 5.2.5 Bush Fire Management which requires a bush fire report to accompany the DA modification submission noting the affectations over the site and potential implications for surrounding land.

#### **5 Failure to address Part 2 All Zones of the Queanbeyan Development Control Plan 2012**

5.1 Part 2 All Zones of the DCP applies to all development within QPRC. Part 2 contains a number of sections, objectives and controls which have not been addressed as part of the DA modification submission, these are discussed below.

5.3 The DA modification fails to address section 2.6 Landscaping which requires the preparation and submission of landscape plans to ensure new development in the LGA reinforces the natural environment and quality of the environment for the broader community.

#### **6 Visual and view impacts**

6.1 The SEE fails to provide any consideration or assessment on the visual or view loss impacts that the 14-15-metre-high telecommunications facility will create. As discussed, there is significant visual impact on the existing dwelling at 58 Powell Drive. In this regard, the SEE and DA is patently deficient, and the consent authority does not have enough information to make a genuine assessment.

6.2 The development has resulted in visual impacts and view loss for residents at 58 Powell Drive. The development is particularly prominent and of a greater scale and impact than the original DA, and yet the modification SEE pays no regard to these matters.

6.3 In our view, Council should insist that the applicant prepare a detailed visual impact assessment which considers the constructed high impact telecommunications facility in respect of which modification approval is sought. This assessment should pay particular regard to:

- (a) the proposed development when viewed from 58 Powell Drive; and
- (b) the need to maintain the environmental setting of both sites' C4 Environmental Living zoning, vistas and view through the Site from adjoining properties.

#### **7 Departures from the approved DA**

7.1 As noted in correspondence to QPRC dated 21 June and 25 August 2022, the subject structure and associated works have not been installed in accordance with the approved proposal under DA2021.1628 and the proposed modification does not appear to adequately address the inconsistencies with the original approval with respect to:

- a) Departure from approved materiality and appearance of the tower
- b) Departures from approved height and location of the tower
- c) Significant increases in the operational capacity and visual impact of the tower due to additional dishes and relay infrastructure.

Dear Ms Belinda McManus,

I write to you on a matter that I find particularly concerning.

I have frequently visited 58 Powell Drive Carwoola and have always enjoyed the fantastic views of the Brindabella mountains from the back hill. However, I recently visited the property and was shocked by the size and the close proximity of a telecommunications tower that significantly impacts the whole vista, distracting greatly from the rural setting. I send this email with the hope that you, as I have done, consider the construction of this tower and its impact on the neighbours views, without their consent, completely unacceptable.

I wish to convey my strong objection and hope this email can contribute to the removal of the tower from its inappropriate location.

Please find attached my declaration.

Kind regards,







7.2 These departures are contrary to the requirements of section 99 of the *Environment Planning and Assessment Regulation 2021* for applications for modification of development consent.

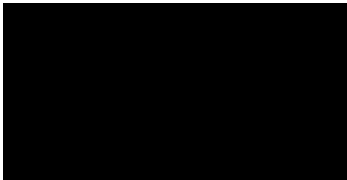
7.3 Given the proponent's clear disregard for adhering to the approved DA proposal and unacceptable construction impacts on adjoining residents as we have previously advised to Council and although these matters have been brought to the attention of the Council certifier, we are not convinced that the proponent will conform to the requirements of the original DA, nor that the modification application accurately reflects the currently constructed facility.

#### **8 Conclusion**

8.1 For the reasons set out above, in our view the DA modification should be refused and the proponent immediately be required to rectify the developments' inconsistencies with the original DA approval.

Should you have any queries regarding this matter please do not hesitate to contact myself on [REDACTED]

Yours sincerely,



This letter is for the use only of the party to whom it is addressed and for no other parties. No responsibility is accepted to any third party who may use or rely on the whole or any part of the content of this letter.

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Hi Belinda,

My name is [REDACTED] and my husband and I live at [REDACTED], just behind the erected Telecommunication Tower installed at 34 Powell Drive. I believe Council will be appointing an Independent Assessor for the new modified Development Application D.A 2021.1628.A and wish to lodge our objection even though the tower is now erected. Unfortunately we missed the first round of objections.

Our main concerns include:

- we believe the tower has been constructed as a very different structure than was described to us in the Community consultation process, or in the QPRC Development Application report
- the tower appears to contradict a permitted land use on C4 land
- was it (or why was it) ever approved by Council at such close proximity to residences?
- questioning the compliance with planning conditions and guidelines for our rural-residential area.

I believe we also need to submit a donation declaration so please find attached.

Regards,

[REDACTED]

Dear Mayor and Councillors of the QPRC

My wife and I are emailing the members of the QPRC to raise our objections and concerns regarding the Yless4U fixed wireless tower recently erected at 34 Powell Drive.

We live at [REDACTED] and the tower is very visible from our property and about [REDACTED] from our boundary. We have previously written and engaged the relevant NSW Government agency raising objections to the installation. Where we got to was that they advised they were the funding agency and final approval for the go ahead of the installation rested with the QPRC. We also contacted Mayor Overall and asked that the tower approval process be properly investigated.

From the outset the Yless4U company has attempted to short-cut/by pass proper processes. Initially it claimed to have an exemption from a full DA process and was about to commence work until there were objections from neighbours impacted by the installation. The QPRC intervened.

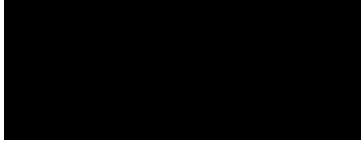
We ask that the members of the QPRC again intervene, review what has actually taken place and ask the firm to remove and relocate the tower to a more acceptable location.

Basis of our objections:

- i) What was advised as basically a power pole with a dish on it is not what was erected. It is a far more substantial and sophisticated piece of infrastructure.
- ii) It is our understanding that this type of structure contravenes the QPRC's own land use rules for C4 zoned land.
- iii) There were alternative sites but the company made no serious attempt to secure a deal with one of those property owners.
- iv) The other similar towers in this region are located on rural properties but not where there already a number of existing rural homes. Powell Drive and surrounding homes where here first, and why we choose to live here should not be so easily disregarded. There is no mention in long term plans for the area of possible telecommunications tower facilities (as there is for example for a possible road through to Kings Hwy).
- v) There is no clear guidance on whether this type of installation may pose a health risk to nearby properties. The operation of the facility should at least be halted until that is known.
- vi) The tower spoils the landscape and devalues nearby properties. No compensation is proposed. Further all these property owners are rate payers. Yless4U is not a ratepayer. (Interestingly the current owner of 34 Powell Drive, who agreed to the installation, is selling up!)
- vii) The technology which requires line-of-sight, point-to-point will serve only a certain number of the population base in the area, there are other suppliers who provide a similar service and there is a question mark over how soon the technology will be obsolete. We know of no one in this area who has signed up to the Yless4U service but appreciate that our RFS may benefit should we have a major bushfire event. Our ADSL service is adequate for most who we've spoken to, our Federal member is working to have Telstra improve its service and one day we may get NBN.
- viii) Business interests should be balanced with those of private citizens and rate payers. Yless4U seeks to provide a service for a fee, which we get but the venture does come at a cost to nearby property owners and in other ways. These counterbalancing

interests should be given due weighting. The environmental, and potential health costs should also be recognised and valued.

Thank you all for your consideration of this matter. We ask that you review the earlier decision and find against this company that has been less than straightforward, and the tower be relocated.



14 February 2023






Queanbeyan-Palerang Regional Council  
PO Box 90  
Queanbeyan NSW 2620

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

**Attention: Proper Officer**

Dear Sir/Madam,

 v Queanbeyan-Palerang Regional Council

- 1 We act for  the registered proprietors of .
- 2 We refer to Development Application DA.2021.1628 (**DA**) for the construction of a 12 metre telecommunications tower on 34 Powell Drive, Carwoola. Our client's property is located at  (31 DP 774571),  of 34 Powell Drive, Carwoola.
- 3 The DA was approved by Council on 25 May 2022. Condition 1 of the development consent requires the development to be carried out in accordance with the approved plans, including the 'Bereza' plans stamped by Council's  on 25 May 2022. The plans require the tower to be built 102.90 metres from our client's property.
- 4 We understand that the applicant, YLESS4U Pty Ltd, has applied for a modification of the DA pursuant to section 4.55(1), *Environmental Planning and Assessment Act 1979 (Act)*.
- 5 This is an objection to Council granting the proposed modification.
- 6 Section 4.55(1) of the Act enables Council to (in accordance with the regulations), modify the DA to correct a minor error, misdescription or miscalculation. Regulation 100(1)(e)(i) states that a modification application must contain information whether it is intended to *merely* correct a minor error, misdescription or miscalculation.
- 7 The description of the proposed modification which simply states the "*Tower has been installed where the survey peg was located...*" is unsatisfactory. The description fails to identify the precise location of the tower in its proximity to the neighbouring properties as approved by the DA and as built.
- 8 The DA and proposed modification documents appear identical. The only difference is that a surveyor's certificate has been inserted into the documents at page 34. It records that the tower has been built 89.74 metres from our clients' boundary, not the approved distance of 102.9 metres. In breach of Condition 1 of the development consent, the tower has been built 13.16 metres closer to our clients' boundary than what was approved.

- 9 Our client objects to the proposed modification on the following bases.
- 10 In *Micro Nest No 1 Pty Ltd on behalf of Micro Nest Ashfield Trust v Inner West Council*,<sup>1</sup> Commissioner Grey approved a modification of development consent of occupancy numbers in a boarding house, from 34 to 50, under s 4.55(1).
- 11 However in giving her reasons, Commissioner Gray only approved the modification because the maximum occupancy of 34 lodgers was issued inconsistently with the overall development consent. First, a Plan of Management (which formed part of the consent) allowed for up to 50 lodgers. Second, a simple addition of the occupancy of each room calculated within a table in the consent achieved an occupancy of 50 lodgers, not 34. Commissioner Grey approved the modified consent on the basis that it had always intended to approve 50 lodgers, and the calculation of 34 was an administrative error.
- 12 The case *Micro Nest No 1 Pty Ltd on behalf of Micro Nest Ashfield Trust v Inner West Council* gives judicial guidance on the intended application of s 4.55(1). Section 4.55(1) is intended to cure an error within the development consent, not change the nature and content of a condition of consent. If the proponent wants to change the nature and content of a condition of consent, that is, to change the location of the tower from a distance of 102.9 metres to 89.74 metres, it will need to make an application under s 4.55(2) of the Act – which applies an entirely different test to s 4.55(1).
- 13 Further, noting the NSW Land and Environment Court's guidance on the application of s 4.55(1) in *Micro Nest No 1 Pty Ltd on behalf of Micro Nest Ashfield Trust v Inner West Council*, it is apparent that the proposed modification in no way constitutes a "minor" error. It is a *significant* error on the proponent's part on that basis the proposed modification should be refused.
- 14 The decision made by Council to approve the DA relied on QPRC's delegated report. Under the section titled 'Description of the Site and Locality', Figure 2 recorded the location of the tower as 102 metres from our clients' boundary line. Given that our clients' property appears to be closest to the tower, and is therefore most visually impacted by the tower, the assessor went to the trouble of visually assessing the precise distance of the tower from our client's boundary to inform the voting Councillors.
- 15 Under the section 'Description of the Proposed Development', Council reported that the tower would be located with setbacks of 102 metres from the northern boundary. In assessing principle 1(g) of the NSW Telecommunications Facilities Guidelines relating to avoiding or minimising (relevantly) a vista or panorama viewed from private land, Council said that: "*Council officers have inspected the neighbouring dwelling at 58 Powell Drive.... Officers have noticed that the location of the tower identified by the submitter is closer to their property than the actual proposed location of the tower. The site plan provided by the applicant indicates the tower will be located approximately 102 metres from the northern boundary...*"
- 16 In reaching its decision to grant the DA, Council heavily relied on the distance of the tower being located 102 metres, not 89.74 metres, from our clients' property.

Concerns with the process

- 17 Our clients are alarmed that the proponent is attempting to circumvent NSW planning legislation and regulations by attempting to change the nature and content of a condition of consent through by incorrectly seeking to rely on s 4.55(1). Our clients consider Council ought to take a cautious approach in its assessment of the modified

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<sup>1</sup> [2019] NSWLEC 1320.

proposal given the history of the DA assessment process, and in particular, the deficiencies in Council's own involvement. These deficiencies were set out in details in submissions on the original DA.

- 18 More recently, we have reviewed documents produced by Council relating to the assessment process of the DA. It is apparent from these documents that [REDACTED] at all material times had a pecuniary interest of a financial nature, likely in breach of clause 5.4 of the QPRC Code of Conduct. Clause 5.4 of the Code required [REDACTED] to identify his interest, disclose it fully in writing and take appropriate action to manage the conflict.
- 19 It is evident from these documents that over the period 31 August 2021 to 10 March 2022, [REDACTED] actively influenced the process and thereby failed to manage his interest:
- (a) On several occasions (15 and 19 October 2021), [REDACTED] encouraged the director of the proponent, YLEss4U, Mr Green, to find a "loophole" while applying for the DA either with his certifier or Habitat Planning;
  - (b) [REDACTED] compiled legislation for Mr Green that would support an application under the CDC process rather than development approval (notwithstanding that the CDC process was not available for the proposed development);
  - (c) [REDACTED] advised Mr Green on the pertinent points which needed to be addressed in the submissions of those objecting to the DA;
  - (d) [REDACTED] influenced staff in their assessment process by directing [REDACTED] to follow up Canberra Airport for clarification about the approval on numerous occasions, and "keep the pressure" on RFS to provide its report.
- 20 Given the contentious history of the DA, Council should proceed with the utmost caution in considering the modified proposal.
- 21 In any event, for the reasons given in these submissions, and the reasoning in *Micro Nest No 1 Pty Ltd on behalf of Mico Nest Ashfield Trust v Inner West Council*, the proposed modification should be refused.
- 22 Please do not hesitate to contact the writer should you require further information.

Yours faithfully,

[REDACTED]

[REDACTED]

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The Proper Officer, QPRC



Dear Mayor and Council Members,

We are grateful recipients of the YLess4U internet service in Powell Drive Carwoola.

My family have lived at this address for over 30 years and this service is the first time we have fast internet coverage at a reasonable price and we are extremely pleased with the service provided by Yless4U.

The service we now receive is very affordable and efficient, and the first time our "smart" tv can actually function correctly.

We tried everything to access a fast internet service before the Powell Drive tower was constructed and even the NBN (coming via satellite because that was our only option) was just not fast enough to work from home and very expensive.

Please support this important service for us, the local residents, who require it.

Best Wishes

[Redacted]

Home owner

[Redacted]

Dear Mayor and Council Members,

I utterly agree with my wife's note you, copied below, as you might expect.

It looks as if there may be only one family in Powell Drive that has objections to this technological breakthrough which improves the quality of life for the rest of us.

I find it hard to see any strong reasons to object. Does the tower affect their health, their ability to work, their livestock, their peace, their security?

Indeed, the tower appears to support the very opposite of all these cases through the improved communications it provides.

I, and from what I hear, most people in Powell Drive strongly support the tower. We are grateful to the owners who house the tower.

I hope in this case some council oil can be found to silence the single 'squeaky door' and the rest of us can enjoy the rural landscape and a high standard of rural communications.

Kind regards



Home owner

