

MINUTES OF THE SOUTHERN REGION PLANNING PANEL MEETING HELD AT SHOALHAVEN CITY COUNCIL ON FRIDAY 20 NOVEMBER 2009 AT 9:00 AM

PRESENT: Pam Allan (Chair)
Alison McCabe
Allen Grimwood

IN ATTENDANCE: Clr Green Mayor - Shoalhaven City Council
Clr Ward Deputy Mayor- Shoalhaven City Council
T Fletcher Director Development & Environmental Services – Shoalhaven City Council

APOLOGY: Nil

The meeting commenced at 9.00 am. Ms Pam Allan welcomed everyone to the inaugural meeting of the Panel followed by the

1. Acknowledgement of Country.

2. Declarations of Interest -

Allen Grimwood advised that he had assisted Shoalhaven City Council in the preparation of its draft Citywide Local Environmental Plan. However, he was of the view that this did not present a pecuniary interest in relation to today's agenda item.

3. Confirmation of Minutes - Nil

4. Business Items

2009STH008 – DA 09/2023- Mobile Phone Telecommunications Facility - Lot 397 DP 755952 (No.42A) Yalwal Road, West Nowra

1. Letter table from Shoalhaven Council acknowledging support of application.
2. Council's officers provided an overview of the application

5. Public Submission -

Mr R. Cusack, addressed the panel

6. Business Item Recommendations

2009STH008 – DA 09/2023- Mobile Phone Telecommunications Facility - Lot 397 DP 755952 (No.42A) Yalwal Road, West Nowra

Moved A. McCabe

Seconded

A Grimwood

Application approved subject to the conditions contained in the Business Paper.

MOTION CARRIED

6. Panel Chair Closing Remarks

In closing the meeting, Ms Allen thanked Shoalhaven City Council for it's cooperation and hospitality in providing the venue and other resources for the Panel meeting.

The meeting concluded at 9.13 am.

Endorsed by

Pam Allan
Chair, Southern Region Planning Panel
1 December 2009

PART A

CONDITIONS OF A GENERAL NATURE, INCLUDING A DESCRIPTION OF THE PROPOSED DEVELOPMENT

General

1. This consent relates to a **mobile phone telecommunication facility (comprising a 30m high monopole and associated headframe with 3 panel antennas, an equipment building, security fencing and associated power supply/optic cable works** as illustrated on the plans with the following references:

- DWG No. N108606 (Site Layout and Access), Sheet No. S1, Issue: 2, Dated: 23.4.09;
- DWG No. N108606 (Site Elevation), Sheet No. S3, Issue: 2, Dated: 23.4.09;

specifications and supporting documentation (Planning Report prepared by Urbis, Ref No: NA04405.01, Dated: August 2005 and Environmental Site Assessment prepared by Aurecon, Ref No: 25860/S255174-ESA, Dated: 23 September 2009) stamped with reference to this consent, as modified by the following conditions. The development shall be carried out in accordance with this consent.

Notes:

- *Any alteration to the plans and/or documentation shall be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under s96 of the Act, or a fresh development application. No works, **other than those approved under this consent**, shall be carried out without the prior approval of Council.*
- *Where there is an inconsistency between the documents lodged with this application and the following conditions, the conditions shall prevail to the extent of that inconsistency.*

2. The approved development/use shall not commence until all relevant conditions of development consent have been met or unless other satisfactory arrangements have been made with council (i.e. a security).

Occupation Certificate

3. An **Occupation Certificate** shall be issued by the Principal Certifying Authority (PCA) before the approved building/development is used or occupied.

Note: Refer to Part F of this development consent for additional requirements in relation to this condition.

CONDITIONS THAT MUST BE COMPLIED WITH BEFORE WORK CAN COMMENCE

Notice of commencement

4. Notice must be given to Council **at least two (2) days** prior to the commencement of building work.

Principal Certifying Authority/Construction Certificate

5. The following must be undertaken **before any building works can commence**:
- a) A Principal Certifying Authority (PCA) must be appointed; and
 - b) A Construction Certificate must be obtained from either Council or an accredited certifier.

Builders' toilet

6. Before commencing building operations, a builder's water closet accommodation must be provided to Council's satisfaction. A chemical toilet may be used on the site or alternatively the site may be provided with temporary closet accommodation connected to Council's sewer where sewer is available and operational.

Under no circumstances will pit toilets or similar be accepted by Council.

Existing services and damage to public assets

7. Prior to the commencement of any work(s) associated with this development:
- a) The developer or his agent shall undertake a site inspection of the adjacent kerbs, gutters, carriageway, reserves and the like and document evidence of any damage to existing assets. Failure to identify existing damage will result in all damage detected after completion of the building work being repaired at the applicant's expense. Any damage to the adjacent kerb, gutter, footpath/road reserve area, carriageway and the like that occurs during development works shall be repaired by the applicant; and
 - b) The developer or his agent must check that the proposed works are not affected by any Council, Integral Energy, telecommunications, gas service or other services. Any required alterations to services will be at the developer's expense.

Soil and water management

8. The relevant sedimentation and erosion controls required by this consent (refer to Condition 10) must be implemented **prior to commencement of any work** and maintained until the work is completed and the site stabilised. Soil and water management including siltation and erosion controls shall be inspected and approved prior to the commencement of any site works.

Supervision of works

9. **Prior to the commencement of any works**, Council shall be advised in writing of the name of a designated person/company nominated by the applicant to be responsible for construction of all engineering works including erosion and sediment control measures.

PART C

CONDITIONS THAT MUST BE COMPLIED WITH BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

Erosion and sediment control plan

10. An Erosion and Sediment Control Plan (ESCP) and accompanying specifications for the construction phase of the works, prepared by a suitably qualified/experienced person and based on the Landcom manual "*Soils and Construction, Managing Urban Stormwater, Vol 1 4th Edition, March 2004*", shall be lodged for approval with the application for a Construction Certificate. The ESCP shall include, but not be limited to the following:

- a) The location and type of proposed erosion and sediment control measures;
- b) Detail environmental (stormwater) management measures that will be implemented; and
- c) Detail on measures to be put in place to ensure contaminated material does not impact on adjoining lands.

The ESCP controls must be implemented, inspected and approved prior to the commencement of any site works.

Waste minimisation and management

11. A Waste Minimisation and Management Plan (WMMP) must be prepared that complies with the requirements of Development Control Plan No. 93 – Waste Minimisation and Management. The plan must clearly detail how the management of waste material(s) on site will be carried out in accordance with NSW DECC *Environmental Guidelines: Classification and Management of liquid and Non-liquid Wastes*.

The WMMP shall be lodged for approval with the application for a Construction Certificate. A copy of the approved WMMP shall be lodged with Council prior to the issue of the Construction Certificate.

Note: "Waste" has the same meaning as the definition of "Waste" in the *Protection of the Environment Operations Act 1997*.

PART D

CONDITIONS RELATING TO THE APPROVED WORK AND SITE MANAGEMENT

Building Code of Australia

12. All building work must be carried out in accordance with the requirements of the Building Code of Australia.

Note: This condition is prescribed under the *Environmental Planning and Assessment Regulation 2000*.

Design and construction

13. All design and construction shall be in accordance with DCP 100 – Subdivision Code.
14. New construction shall comply with the following:
- a) Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' Level 1;
 - b) External doors are to be sealed with draft excluders or weather strips to prevent the entry of embers;
 - c) Vents and weepholes shall be screened with corrosive resistant steel mesh with an aperture not greater than 1.8mm; and
 - d) All new fencing shall be non-combustible.

Asset protection zones

15. To ensure radiant heat levels are below critical limits and to prevent direct flame contact with the approved development, the following is to be undertaken:

- a) A defensible space that permits unobstructed pedestrian access is to be provided around the building so as to allow emergency personnel and other persons to undertake property protection activities;
- b) The ground surface around the approved development (i.e. within the entire compound and outside the fenced area to two (2) meters or the maximum distance achievable) shall be free of vegetation and/or covered in rock or crushed grit so as to minimise fine fuel build up; and
- c) At the commencement of building works the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Soil and water management

16. All practical measures must be taken to ensure erosion and subsequent sediment movement off-site does not occur.

All silt fences or equivalent must be regularly inspected and cleaned out and/or repaired as necessary and all collected silt must be disposed of to the satisfaction of the Principal Certifying Authority (PCA).

Unnecessary disturbance of the site (eg excessive vehicular access) must not occur.

Waste minimisation and management

17. All waste must be contained within the site during construction and then be recycled in accordance with the approved Waste Minimisation and Management Plan (WMMP) or removed to an authorised waste disposal facility (i.e. West Nowra Tip). No waste shall be placed in any location or in any manner that would allow it to fall, descend, blow, wash, percolate or otherwise escape from the site.

Compliance with the WMMP shall be demonstrated by the retention of relevant receipts. These must be submitted to Council, upon request.

18. All excavated surplus material shall be hauled to an approved landfill site.

Contamination

19. During construction where there is visual evidence or otherwise clear identification of further land contamination (e.g. layers of ash or strong hydrocarbon odour, etc) further sampling and chemical analysis must be carried out to confirm the magnitude and extent of contamination and a suitable removal strategy developed in regard to waste classification and disposal. These works to be undertaken in accordance with the NSW DECC *Environmental Guidelines: Classification and Management of liquid and Non-Liquid Wastes*.

Construction hours/storage

20. To limit the impact of the development on adjoining owners/occupiers, the following must be complied with:
- a) All construction work shall be restricted to the hours of 7.00am to 6.00pm Monday to Friday and 8.00am to 1.00pm Saturdays. No construction work shall take place on Sundays or Public Holidays; and
 - b) The parking of machinery/vehicles or the storing of construction equipment/materials, soil, spoil, or rubbish external to Lot 397 DP 755852 is prohibited.

Electromagnetic energy levels

21. The applicant is to provide certification of the operation of the communication facility in accordance with the approved electromagnetic energy (EME) levels, prior to commissioning of the facility (i.e. levels at distances from the facility do not exceed the predicated EME levels in the submitted EME Report, Dated 2/7/09, NSA Site No. 2541010).

Exterior materials/colour schedule

22. a) The development must be constructed in accordance with the approved schedule of colours and building materials and finishes; and
b) Exterior materials are to be non-reflective and of a texture and colour which blend with the existing surroundings.

PART E

CONDITIONS THAT RELATE TO ONGOING MANAGEMENT OF THE PROPOSED DEVELOPMENT

Site management and maintenance

23. The proprietor shall at all times be responsible for on-going site management and maintenance in accordance with the following:
- a) The use of the approved development must not:
- Cause transmission of vibration to any place of different occupancy;
 - Cause 'Offensive Noise' as defined in the Protection of the Environment Operations Act 1997;
 - Impact upon the amenity of any adjoining property or tenancy by reason of the emission of noise, dust, fumes, odour, vibration, electrical interference or otherwise;
- b) Loading and unloading in relation to the use of the approved development must occur within Lot 397 DP 755852.

Noise

24. The L_{A10} (Source) noise level emitted from the Telecommunications facility shall not exceed the background noise level in any octave band (measured using the L_{90} noise level descriptor) by more than 5 dB(A) when measured at the boundary of the nearest affected residence.

Electromagnetic energy levels

25. The telecommunications facility is to comply with the Australian Radiation Protection and Nuclear Safety Agency Protection Standard – Maximum exposure levels to radiofrequency fields – 3kHz to 300Hz as amended from time to time.
26. A validation report shall be submitted to Council within 12 months of the facility commencing operations. This report shall demonstrate that emissions levels for adjoining areas (i.e. at the distances as shown in the submitted EME Report, Dated 2/7/09, NSA Site No. 2541010) do not exceed the predicated EME levels and comply with the Australian Radiation Protection and Nuclear Safety Agency Protection Standard – Maximum exposure levels to radiofrequency fields – 3kHz to 300Hz as amended from time to time.

Asset protection zones

27. In perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

PART F

CONDITIONS THAT MUST BE COMPLIED WITH BEFORE AN OCCUPATION CERTIFICATE CAN BE ISSUED

28. Prior to the issue of an Occupation Certificate for the approved development the requirements of conditions 14 (Design and construction), 15 (Asset protection zones), 21 (Electromagnetic energy levels) and 22 (Exterior materials/colour schedule) shall be complied with and completed.

PART G

REASONS FOR CONDITIONS

Conditions of consent have been imposed to:

1. Ensure the proposed development:
 - a) achieves the objects of the Environmental Planning and Assessment Act, 1979;
 - b) complies with the provisions of all relevant environmental planning instruments;
 - c) is consistent with the aims and objectives of Council's Development Control Plans, Codes and Policies.
2. Ensure that the relevant public authorities and the water supply authority have been consulted and their requirements met or arrangements made for the provision of services to the satisfaction of those authorities.
3. Meet the increased demand for public amenities and services attributable to the development in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979.
4. Ensure the protection of the amenity and character of land adjoining and in the locality of the proposed development.
5. Minimise any potential adverse environmental, social or economic impacts of the proposed development.
6. Ensure that all traffic, carparking and access requirements arising from the development are addressed.
7. Ensure the development does not conflict with the public interest.

PART H

ADVICE ABOUT RIGHTS OF REVIEW AND APPEAL

Development Determination under Environmental Planning and Assessment Act, 1979

*Under section 82A of the Environmental Planning and Assessment Act, 1979 an applicant may request the council to review its determination except where it relates to a complying development certificate, designated development or integrated development. The request must be made **within twelve (12) months** of the date of the receipt of the determination, with a prescribed fee of 50% of the original DA fee.*

*Section 97 of the Environmental Planning and Assessment Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised **within twelve (12) months** after receipt of this notice.*

Approvals under Local Government Act, 1993

Section 100 of the Local Government Act, 1993 provides that an applicant may request Council to review its determination of an application.

*Section 176 of the Local Government Act, 1993 provides that an applicant who is dissatisfied with the determination of the Council may appeal to the Land and Environment Court. The appeal must be made **within twelve (12) months** of the date of determination.*

PART I

ADVICE ABOUT WHEN THIS CONSENT LAPSES

This consent is valid for five years from the date hereon.

In accordance with Section 95 of the Act, development consent of the erection of a building does not lapse if building, engineering or construction work relating to the building or work is physically commenced on the land to which the consent applies before the lapse date.

PART J

GENERAL ADVICE TO APPLICANT

Commonwealth Environment Protection and Biodiversity Conservation Act 1999

The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 provides that a person must not take an action which has, will have, or is likely to have a significant impact on

- a) A matter of national environmental significance (NES) matter; or
- b) Commonwealth land

without an approval from the Commonwealth Environment Minister.

This application has been assessed in accordance with the New South Wales Environmental Planning & Assessment Act, 1979. The determination of this assessment has not involved any assessment of the application of the Commonwealth legislation.

It is the proponent's responsibility to consult Environment Australia to determine the need or otherwise for Commonwealth approval and you should not construe this grant of consent as notification to you that the Commonwealth Act does not have application.

The Commonwealth Act may have application and you should obtain advice about this matter.

There are severe penalties for non-compliance with the Commonwealth legislation.

Disclaimer – s88B restrictions on the use of land

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Under clause 37 of Shoalhaven Local Environmental Plan 1985 agreements, covenants or instruments that restrict the carrying out of the proposed development do not apply to the extent necessary to enable the carrying out of that development, other than where the interests of a public authority is involved.

NSW Native Vegetation Act 2003

The Native Vegetation Act 2003 requires consent for the clearing of remnant native vegetation or protected regrowth from the Southern Rivers Catchment Management Authority. In the Shoalhaven City Council area, this requirement generally applies to land that is zone Rural (Zone 1), Special Use (Zone 5), Open Space (Zone 6), Environment Protection (Zone 7) and Natural Hazards (Zone 9). If your development consent relates to land in such a zone then you may need to get a further separate approval from the Southern Rivers Catchment Management Authority for the clearing of remnant native vegetation or "protected" regrowth.

This development application has been assessed in accordance with the New South Wales Environmental Planning & Assessment Act, 1979. The determination of this development application has not involved any assessment of the proposed development in regard to the NSW Native Vegetation Act 2003.

It is the proponent's responsibility to consult the Southern Rivers Catchment Management Authority to determine the need or otherwise for their approval and you should not construe the granting of this development consent as notification to you that the NSW Native Vegetation Act does not apply. The NSW Native Vegetation Act 2003 may have direct application to your proposal and you should obtain advice about this matter directly from the Southern Rivers Catchment Management Authority. You can contact them on 4429 4446 or by email southern@cma.nsw.gov.au.

There are severe penalties for non-compliance with the Native Vegetation Act 2003.

Rural Fire Service

The Rural Fire Service has advised that there is a potential for the combined effects of flame contact, radiant heat and convective heat exposures to overwhelm the building material and impact on the structure and contents.

Adjoining Crown Land

The Department of Lands has advised that the proponent may not:

- a) Encroach upon the adjacent crown land/road;
- b) Remove any vegetation from the adjacent and adjoining Crown land/road;
- c) Stockpile materials, equipment or machinery on the adjacent or adjoining Crown land/road;
- d) Use the adjacent and adjoining crown land as access;
- e) Direct stormwater discharges or contaminated waste on the adjacent and adjoining Crown land;
or
- f) Use the adjacent and adjoining Crown land as an asset protection zone.