

JRPP No:	2010STH025
DA No.	DA-2010/860
Proposal:	Installation of a 40m communications tower
Property:	Lot 1 DP 538742; Lot 1 Old Port Rd, Port Kembla
Applicant:	David Deitch, PO Box 192 Port Kembla 2505
Report by:	Mark McCosker, Development Project Officer, Wollongong City Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

Reason for consideration by Joint Regional Planning Panel

The proposal has been referred to Joint Regional Planning Panel pursuant to clause 13C of State Environmental Planning Policy (Major Development) 2005. The proposed communications tower is a structure in excess of 13 metres in height and is located within the coastal zone.

Proposal

The proposal is for the installation of a 40m communications tower.

Permissibility

The site is zoned IN3 Heavy Industrial pursuant to State Environmental Planning Policy (Major Development) 2005. The proposal falls under the definition of a “telecommunications facility” pursuant to State Environmental Planning Policy (Infrastructure) 2007. The SEPP prescribes that “telecommunications facilities” are permissible on any land with development consent. The proposed tower is deemed a permissible use with development consent.

Consultation

The application was notified in accordance with WDCP 2010 Appendix 1: Public Notification and Advertising. No submissions were received.

Main Issues

- Height
- Green and Golden Bell frog

RECOMMENDATION

It is recommended that DA-2010/860 be recommended for approval subject to conditions of consent contained in Attachment 4.

ASSESSMENT REPORT

Application summary

Lodged	8 July 2010
Number of submissions	Nil
Additional information requested	Additional information requested in regard to the relevant statutory controls, in particular Schedule 3 Part 20 Division 2 of SEPP (Major Development) 2005.
Additional information provided	Yes
Outstanding issues:	Nil

1 Background

There are no other applications relevant to the proposals.

2 Site description

The 2,719m² site is located on the south-eastern side of the intersection of Old Port and Darcy Roads. The site abuts the Port Kembla railway corridor to the north-east. Existing site development incorporates a brick office building and several garages and outbuildings. The site is presently utilised as a drop-in centre for men and women. Several of the buildings on site are vacant.

Site constraints

Council records list the site as being affected by the following constraints:

- contaminated land
- acid sulphate soils

3 Proposal

The proposal is for the erection of a 40m high lattice type communications tower in the north-western corner of the site between an existing masonry garage and the Old Port Road frontage. The applicant states:

“The development proposal seeks Council’s consent for the installation of a 40m communications tower in the south-western corner of the subject site. This tower is to be operated by 3D Coverage Pty Limited and is intended to provide a structure upon which to attach a number of existing telecommunications facilities that are currently located on the Australian Volunteer Coast Guard’s tower at Hill 60 and operated by customers of 3D Coverage. These telecommunications facilities were relocated to Hill 60, as an interim measure, after being moved from their previous site at 26 Suvla Street, Port Kembla.

3D Coverage’s customers’ facilities operate from Hill 60 at a reduced power level and are unable to provide the coverage needed as the transmitters receive interference from the Coast Guard’s equipment. This situation could be rectified by increasing the power level of the transmitters used by 3D Coverage’s customers. However, this would, in turn, cause interference to the Coast Guard’s equipment which is not an acceptable outcome. In addition, the elevation of the Hill 60 site is too high to achieve the required electrical radiofrequency down-tilt that is necessary to cover the area effectively. As a result, a new, permanent structure is required upon which to locate 3D Coverage’s customers.

The customers of 3D Coverage who are to be moved from Hill 60 to the proposed tower are:

- *Hutchinson Telecommunications — providing an emergency service paging system for the Illawarra Area Health Service (customer of 3D Coverage for 10 years);*
- *TNT Transport — providing a back up UHF communication system for its transport network (customer of 3D Coverage for 10 years);*

- *Dion Bus Service* — providing essential UHF service for bus and base operations (customer of 3D Coverage for 10 years);
- *Elchaars* — providing essential UHF service for its towing business (customer of 3D Coverage for 8 years); and
- *Cleanaway Waste* — providing essential UHF service for its waste and recycling operations (customer of 3D Coverage for 10 years).

The proposed facility is intended to provide coverage of the Port Kembla Harbour and surrounding areas and will require the erection of a 40m tall lattice-style tower at the subject site. The proposed tower is triangular in cross-section and will be supported on three (3) concrete piers and a mass-concrete footing (6.1m by 6.1m), excavated 1m into the ground. The concrete piers will be positioned at 3.119m centres and at a radius of 1.801 m from the centre of the tower's base.

The tower has a triangular footprint with sides of 3.119m at its base, tapering to a triangular footprint with 1.3m sides at the top of the tower. The base of the tower will be established at RL 11.86m AHD and the top of the tower, RL 51.86m AHD.

The proposed tower will be a lattice-type construction comprised of galvanised steel components, assembled together to the desired tower height. An internal access ladder will be provided up the middle of the tower structure and a work platform at its apex.

To prevent unauthorised access the tower will be enclosed in a compound by a 2m high security fence and an anti-climb device will be installed at the base of the access ladder. The compound fence, and each of the tower's three (3) faces, will be sign-posted with unauthorised entry warning signs.

It is proposed to undertake landscaping around the perimeter of the fenced tower compound. This landscaping is shown on the landscape plan submitted with the development application, and consists of a mixture of low-maintenance ground covers and shrubs.

Once constructed, access to the tower is expected to be required only about once a month for routine maintenance and checking. Access to the site will be obtained via the existing driveway off Old Port Road and parking is available on-site. In the event that the proposed telecommunications facilities and tower are no longer required, the structure will be disassembled and removed from the site."

4 Environmental Planning and Assessment Act 1979

In determining a development application, the consent authority must take into consideration matters referred to in section 79C(1) of the EP&A Act 1979 as are of relevance to the development. The relevant matters of consideration under section 79C(1) are outlined below.

Section 79C(1) of the Environmental Planning and Assessment Act 1979

(a)(i) any environmental planning instrument

State Environmental Planning Policies

- SEPP 71 – Coastal Protection – No issues identified – see assessment below.
- SEPP (Infrastructure) 2007 – No issues identified – see assessment below.
- SEPP (Major Development) 2005 – No issues identified – see assessment below.
- SEPP No. 55 – Remediation of Land

Local Environmental Planning Policies

- Not applicable.

Development Control Plans

- Wollongong Section 94A Development Contributions Plan 2009 – Issues identified – see assessment below.

Wollongong Development Control Plan 2009 – No issues identified – see assessment below.

Section 79C(1) of the Environmental Planning and Assessment Act 1979

(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

None applicable.

(a)(iii) any development control plan

- Wollongong Development Control Plan 2009
- Wollongong Section 94A Development Contributions Plan (2009)

(a)(iia) Any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F

There are no planning agreements entered into or any draft agreement offered to enter into under S93F which affect the development.

(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

Clause 92 The proposal does not involve demolition.

The site is located on land to which the Government Coastal Policy applies.

Clause 93 Fire safety and other considerations

Clause 94 Consent authority may require buildings to be upgraded

b) the likely impacts of development

Context and Setting:

The proposed tower is considered of acceptable bulk, height and scale for the industrial zone and essentially results in a slimline appearance akin to the general heavy industrial precinct. In terms of height, it is noted that under SEPP (Major Development) 2005 there is no height control. Notwithstanding this, it is considered that the proposed height of 40m is in keeping with the surrounding development and in context with the industrial surroundings.

The proposal does not conform to minimum front and side setback requirements. The preferred location for the tower is in the north-western corner of the site adjacent the front and side boundaries. The irregular configuration of the site and its location, being surrounded by road reserve and railway corridor, means this location is not considered onerous whilst the lesser setbacks do not cause any detriment to nearby sites.

In regard to visual impact, the applicant states:

"The subject site is located within a heavy industrial area and consideration has been given to the potential visual impact of the proposed 40m tall tower. The nature and character of the surrounding urban form is one that is dominated by large-scale manufacturing businesses which generally consist of very large buildings and tall ancillary structures such as chimneys and stacks.

The proposed tower structure is of a galvanised steel lattice-style construction. The galvanised steel framework will tarnish over time, due to exposure to the elements, and will eventually achieve a dull grey finish that will tend to recede into the background, rather than distinguish from it."

Within the overview of the locality as viewed from Hill 60 to the south-east, the proposed tower will be seen as just another vertical element within the vista and will not be obtrusively obvious to the casual observer. The proposed tower will sit below the ridge line of the escarpment in the background and its dull grey colour will blend with the blue-grey tones of the background development.

Access, Transport and Traffic:

The proposal does not require provision for any additional car parking nor does it result in any additional servicing requirements apart from that during the construction phase.

Section 79C(1) of the Environmental Planning and Assessment Act 1979

Public Domain:

The proposal is not expected to have any adverse impact on the public domain.

Utilities:

The proposal is not envisaged to place an unreasonable demand on utilities supply. Existing utilities are adequate to service the proposal.

Heritage:

No heritage items will be impacted by the proposal.

Other land resources:

The proposal is considered to contribute to orderly development of the site and is not envisaged to impact upon any valuable land resources.

Water:

The proposal will not have any water consumption.

Soils:

See Technological Hazards below.

Air and Microclimate:

The proposal is not expected to have any negative impact on air or microclimate.

Flora and Fauna:

The site is a possible habitat for the green and golden bell frog. The applicant advises:

Information provided by Council indicates that the subject site provides potential habitat for the Green and Golden bell frog (Litoria aurea). The Green and Golden bell frog is listed in Schedule 1 of the Threatened Species Conservation Act 1995 as an endangered species. An endangered species is one that is likely to become extinct or is in immediate danger of extinction.

As required by Section 5A of the Environmental Planning and Assessment Act 1979, an assessment has been undertaken to determine whether the development proposal is likely to have a significant effect on the Green and Golden bell frog or its habitat. This assessment included an inspection of the development site on 9 September 2010.

The Green and Golden bell frog inhabits marshes, dams and stream-side particularly those containing bulrushes or spikerushes. The optimum habitat includes unshaded waterbodies, free from predatory fish, with a nearby grassy area and the availability of diurnal sheltering sites (NSW NPWS).

The development site is located in the south-western corner of the subject site. The development site is highly exposed, due to its street corner location; and has been highly disturbed, through the construction of a brick garage building, the installation of a large shipping container, and the recent removal of two (2) paperbark trees and part of the chainwire fence.

The development site is well-drained and located near the highpoint of the local landform, and its soil profile consists of two (2) layers of coarse granular fill (200mm of gravel and 600mm of clayey sand — Heggies 2010). All of these factors would make it difficult for water run-off to pond in the vicinity of the development site even for a short period of time. Accordingly, the physical attributes of the development site do not lend themselves to the provision of habitat suitable for the Green and Golden bell frog.

The site inspection undertaken on 9th September 2010 confirmed that there was no habitat present at the development site that was suitable for the Green and Golden bell frog. The Green and Golden bell frog is active during the day and no individuals were sighted or heard during the time of the inspection."

The applicant states the development proposal will have no impact on the endangered species.

Council's Environment Division has provided a satisfactory referral in this regard.

Section 79C(1) of the Environmental Planning and Assessment Act 1979

Waste:

A condition should be attached to any consent granted that an appropriate receptacle be in place for any waste generated during the construction.

Energy:

The proposal is not envisaged to have unreasonable energy consumption.

Noise and vibration:

A condition should be attached to any consent granted that nuisance be minimised during any construction, demolition, or works.

Natural hazards:

There are no natural hazards affecting the site that would prevent the approval of the proposal.

Technological hazards:

Council records list the site as contaminated land affected and acid sulphate soil affected. The construction of the tower will not adversely affect the acid sulphate soils on site. Matters relating to contaminated land have been addressed above.

An 'Electromagnetic Radiation Assessment' was also undertaken. The applicant advises:

"An electromagnetic radiation (EMR) hazard assessment of the development proposal has been undertaken by RFI Industries Pty Limited and previously submitted to Council. The EMR assessment has been based upon the antenna to be installed on the tower, which consists of:-

- Six (6) Dipole antenna arranged at heights between 30m and 40m above ground level; and
- Three (3) Yagi antenna arranged at heights of between 26m and 28m above ground level.

The EMR assessment has been prepared in accordance with the ARPANSA Environmental EME Report protocol (2006) and AS 2722.2-1988 Radiofrequency Radiation Part 2 Principles and Methods of Measurement — 300kHz to 100GHz.

In the interests of a conservative assessment, the report adopted a worst-case scenario all the antenna were assumed to be axially aligned at the minimum height of 26m above ground level. The EMR assessment has determined that the worst-case scenario would result in a power flux density (PFD) at 1.5m above ground level of 0.0103W/m² at a distance of 33m from the tower base. This represents less than 0.5% of the allowable General Public exposure level of 2.273W/m² at 454.6MHz.

Based on the results of the EMR hazard assessment, the proposed development is not likely to pose a risk to the general public."

Council's Environment Division has provided a satisfactory referral in this regard.

Safety, Security and Crime Prevention:

This application does not result in any opportunities for criminal or antisocial behaviour.

Social Impact:

The proposal is not expected to create any negative social impact.

Economic Impact:

The proposal is not expected to create any negative economic impact.

Site Design and Internal Design:

The application does not result in any departures from Council's development control plan with the exception of minimum front and secondary road setbacks and minimum front landscape strips as outlined and addressed above.

Section 79C(1) of the Environmental Planning and Assessment Act 1979

A condition should be attached to any consent granted that all works are to be in compliance with the Building Code of Australia.

Construction:

A condition should be attached to any consent granted that WorkCover be contacted for any demolition or use of any crane, hoist, plant or scaffolding.

Cumulative Impacts:

The proposal is not expected to have any negative cumulative impacts.

c) the suitability of the site for development

Does the proposal fit in the locality?

The proposal is considered appropriate with regards to the zoning of the site and not expected to have any negative impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

There are no site constraints that would prevent the approval of the proposal

d) any submissions made in accordance with this Act or the regulations

The application was notified in accordance with WDCP 2010 Appendix 1: Public Notification and Advertising. No submissions were received.

Submissions from public authorities

Railcorp have reviewed the proposal and have not objected to the proposal subject to conditions.

e) the public interest

The application is not expected to have any negative impacts on the environment or the amenity of the locality. It is considered appropriate and permissible with consideration to the zoning and is therefore considered to be in the public interest.

5 State Environmental Planning Policy No. 55 – Remediation of Land

Contamination and remediation to be considered in determining development application

(1) A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

It is considered that despite the site being flagged as contaminated, the land is suitable for the proposed development and no rehabilitation is required. Council's Environment Officer has reviewed the application in this regard and has not raised any issues subject to recommended conditions requiring dust suppression, excavated material management and waste management.

6 State Environmental Planning Policy No. 71 – Coastal Protection

The land does not form part of the coastal foreshore or provide public access to recreation areas. No flora or fauna will be disturbed by the construction of the tower. No overshadowing or detrimental loss of views is anticipated.

2 Aims of Policy

- (a) *to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*
- (b) *to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- I *to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (d) *to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and*
- (e) *to ensure that the visual amenity of the coast is protected, and*
- (f) *to protect and preserve beach environments and beach amenity, and*
- (g) *to protect and preserve native coastal vegetation, and*
- (h) *to protect and preserve the marine environment of New South Wales, and*
- (i) *to protect and preserve rock platforms, and*
- (j) *to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and*
- (k) *to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
- (l) *to encourage a strategic approach to coastal management.*

8. Matters for consideration

The matters for consideration are the following:

Matters for consideration	Comment
(a) the aims of this Policy set out in clause 2,	The proposal, located within a heavy industrial area, will have minimal impacts on the coastal environment and is considered consistent with the objectives outlined in Clause 2.
(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,	The proposal will not affect access to the coastal foreshore.
I opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,	The site is not in close proximity to the coastal foreshore.
(d) the suitability of development given its type, location and design and its relationship with the surrounding area,	The proposal complies with Council's planning requirements in that the proposed tower is a permissible use and is therefore consistent with the zone. There

	are not expected to be any negative impacts on the amenity of the locality. The proposal is considered suitable for the location.
(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,	The proposal will not detrimentally affect the coastal foreshore.
(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,	The proposal will impact on the scenic values of the NSW coast. As it is proposed within an existing heavy industrial precinct this impact is considered negligible.
(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,	No significant flora or fauna are affected by the proposal. Council's Environment Division has recommended conditions in relation to the possibility of Green and Golden Bell frog habitat, should the application be approved.
(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats	There will not be negative impacts on fish or marine vegetation and their habitats.
(i) existing wildlife corridors and the impact of development on these corridors,	No wildlife corridors are impacted by the proposal.
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,	The proposal will not impact on or be affected by any coastal processes or hazards.
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,	The proposal will not result in any conflicts between land and water based coastal activities.
(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	The proposal will not impact on any items of cultural importance.
(m) likely impacts of development on the water quality of coastal waterbodies,	The proposal will not impact on the water quality of any coastal waterbodies.
(n) the conservation and preservation of items of heritage, archaeological or historic significance,	No items of heritage, archaeological or historic significance are affected by the proposal.
(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,	Not applicable.
(p) only in cases in which a development application in relation to proposed development is determined:	
(i) the cumulative impacts of the proposed development on the environment, and	There are not expected to be any negative cumulative impacts from

the proposal.

-
- | | |
|---|--|
| (ii) measures to ensure that water and energy usage by the proposed development is efficient. | The proposal will not result in excessive energy or water usage. |
|---|--|
-

7 State Environmental Planning Policy (Infrastructure) 2007

Clause 8 Relationship to other environmental planning instruments

(1) Except as provided by subclause (2), if there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.

As discussed at (2) below, State Environmental Planning Policy (Major Projects) 2005 prevails to the extent of any inconsistency.

(2) Except as provided by subclause (3), if there is an inconsistency between this Policy and any of the following environmental planning instruments, the other instrument prevails to the extent of the inconsistency:

- (a) State Environmental Planning Policy No 14—Coastal Wetlands,*
- (b) State Environmental Planning Policy No 26—Littoral Rainforests,*
- (c) State Environmental Planning Policy (Major Projects) 2005.*

Notwithstanding the above, clause 18(1) of Part 20: Three Ports Site of Schedule 3: State Significant Sites of SEPP (Major Developments) 2005 negates this codicil and permits SEPP (Infrastructure) 2007 to apply (see the reference to clause 18(1) below).

Division 21 Telecommunications and other communication facilities

Clause 115 (1) Development Permitted with Consent states:

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

The clause permits the proposal with consent on any land. Although State Environmental Planning Policy (Major Projects) 2005 prevails to the extent of any inconsistency, the proposal is permitted (see Section 4.1.4 below – reference to clause 18(1)). The proposed tower is deemed a permissible use with development consent.

8 State Environmental Planning Policy (Major Development) 2005

Clause 7 State Significant Sites

Schedule 3 of the SEPP identifies the entire Port Kembla area (incorporating the subject site) as a state significant site.

Schedule 3 State significant sites

Schedule 3 of the SEPP identifies the entire Port Kembla area (incorporating the subject site) as a state significant site.

Part 20 Three Ports Site

The site is located within the Three Ports site.

4 Relationship with other environmental planning instruments

The only environmental planning instruments that apply, according to their terms, to land within the Three Ports Site are this Policy and all other State Environmental Planning Policies, other than State Environmental Planning Policy No 1-Development Standards.

7 land use zones

The site is zoned IN3 Heavy Industry.

The proposal falls under the definition of a “communication facility”.

8 objectives of land use zones to be taken into account

The objectives of the IN3 zone are:

- (1) *The objectives of Zone IN3 Heavy Industrial are as follows:*
- (a) *to provide suitable areas for those industries that need to be separated from other land uses,*
 - (b) *to encourage employment opportunities,*
 - (c) *to minimise any adverse effect of heavy industries on other land uses,*
 - (d) *to provide transport infrastructure and intermodal facilities,*
 - (e) *to allow some diversity of activities that will not significantly detract from the operation of existing or proposed industries.*

It is considered the proposed tower conforms to the zone objectives.

Clause 10(3) permits and/or prohibits the following uses:

- (2) *Development for any of the following purposes is permitted without development consent on land within Zone IN3 Heavy Industrial:*
- environmental protection works.*
- (3) *Development for any of the following purposes is permitted only with development consent on land within Zone IN3 Heavy Industrial:*
- depots; food and drink premises; freight transport facilities; heavy industries; port facilities; roads; transport depots; warehouse or distribution centres; waste or resource management facilities.*
- (4) *Except as otherwise provided by this Part, development is prohibited on land within Zone IN3 Heavy Industrial unless it is permitted by subclause (2) or (3).*

As stated previously, the proposal falls under the definition of a “telecommunications facility” pursuant to Clause 113 Division 21 Telecommunications and other Communications Facilities within State Environmental Planning Policy (Infrastructure) 2007. The SEPP does not provide specific Land Use definitions and ‘telecommunication facility’ is not included as a permissible use.

Notwithstanding the above, clause 18(1) prescribes that:

“...this Part does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development that is permitted to be carried out with or without development consent or that is exempt development under the State Environmental Planning Policy (Infrastructure) 2007”.

As such, Clause 115 (1) of SEPP (Infrastructure) 2007 applies and permits the proposal with consent on any land. The proposed tower is deemed a permissible use with development consent.

Clause 13C Coastal development to which Part applies

Clause 13C (b) applies to development within the coastal zone for:

buildings or structures (other than minor alterations or minor additions to existing buildings or structures) that are greater than 13 metres in height, excluding any building that complies with all development standards relating to the height of such a building set by a local environmental plan that applies to the land on which the building is located,

As the proposal is 40m in height, Clause 13F (1)(b) requires that Council consent functions are to be exercised by the Joint Regional Planning Panel.

9 Commonwealth Legislation

In 1991, the Commonwealth Government initiated a major reform of the telecommunications industry to regulate the establishment of telecommunication facilities. The following legislation was introduced:

Telecommunications Act 1997 (Commonwealth)

The Act establishes a regime for Carriers' rights and responsibilities when inspecting, maintaining or installing telecommunications facilities. The applicant must operate under the provisions of the Telecommunications Act 1997 and Telecommunications Code of Practice 1997.

In accordance with the *Telecommunications (Low-impact Facilities) Determination 1997*, a carrier is exempt from the need to obtain development consent in cases when:

- a. installing a “low impact facility” within the meaning of the Telecommunications (Low-impact Facility) Determination 1997 (as amended by amendment No. 1 of 1999) published by the Minister pursuant to the Telecommunications Act 1997; and
- b. “maintaining” a facility pursuant to division 3 and 4 of Schedule 3 of the Telecommunications Act 1997.

The Telecommunications (Low-impact Facility) Determination 1997 lists certain facilities that cannot be low-impact facilities. The list includes ‘*a tower that is not attached to a building*’. By definition, a tower means a tower, pole or mast. Given the proposal is for installation of a 40 metre structure, the proposal is not classified as a low-impact facility. Accordingly, the proposal is subject to the provisions of the Environmental Planning and Assessment Act 1979 rather than the Telecommunications Act 1997.

Telecommunications Code of Practice 1997

The Telecommunications Code of Practice 1997 was established under the Telecommunications Act 1997 and outlines operational conditions of carriers. It provides guidelines on best engineering practice and provides regulation over the manner in which telecommunications carriers and providers present and conduct themselves in relation to providing safe and efficient network and servicing to customers. Best practice is defined in the Code as ‘*using the best available design, planning and location practices to minimise the potential degradation of the environment and the visual amenity associated with the facilities.*’

The height and bulk of the proposed tower is considered consistent with the existing industrial streetscape and surrounding heavy industrial precinct.. Although there would be a degradation of the visual amenity of the local area and surrounding public domain, this is not considered detrimental in the context of the heavy industrial zoning.

10 Wollongong Development Control Plan 2009

PART B – LAND USE PLANNING CONTROLS

The DCP does not apply to the Port Kembla land affected by the SEPP (Major Development) 2005. However, it can be utilised as a generic guideline in assessing the proposal.

CHAPTER B5 INDUSTRIAL DEVELOPMENT

Standard:	Requirement:	Proposal:	Compliance:
Setbacks:			
Front	7.5m	1.5m	No*
Secondary – corner lots	5.5m	4.0m	No*
Parking:	Not applicable	Nil	N/A
Loading:	Not applicable	Nil	N/A
Landscaping:			
Frontage strip	3m minimum	1.5m	No*

Fencing	1.8m height	1.8m	Yes
Outdoor Storage:	Not applicable	Nil	N/A
Fencing:	2.8m high max.	1.8m	Yes
Stormwater:	Not applicable	Nil	N/A

**The proposal does not conform to minimum front and secondary road setbacks, and front landscaping strips. See Section 3.5 below.*

The proposal does not alter existing servicing arrangements for the site or require additional car parking. As such, the proposal is considered to be consistent with the aims and objectives of the Plan.

PART C – SPECIFIC LANDUSE CONTROLS

CHAPTER C17: TELECOMMUNICATIONS AND RADIOCOMMUNICATIONS FACILITIES

Standard:	Requirement:	Proposal:	Compliance:
Preferred zone:	Industrial	Industrial	Yes
Restrict public access:	Fenced	Fenced	Yes

The Plan states:

Carriers are to design antennas and supporting infrastructure in such a way as to minimise or reduce the visual and cumulative visual impact from the public domain and adjacent areas. Wherever technically feasible, antennas and mast structures should either not be visible, or should be as visually unobtrusive as possible, from the fronting road at pedestrian eye level. Wherever technically feasible they should be located to minimise their obtrusiveness. Wherever possible, towers should be of ‘slimline monopole’ construction.

Comment: It is difficult to reduce the impact of a 40m tower. However, the braced metal pylon structure is 3m x 3m at the base tapering as it rises and does not appear as a solid edifice. It is compatible with the heavy industrial site and conforms to development surrounding and in close proximity.

The applicant should demonstrate that, in selecting a site, it has adopted a precautionary approach and accounted for the principles of ecologically sustainable development in regards to minimising EMR exposures consistent with the Code for the Deployment of Mobile Phone Network Infrastructure Australian Communications Industry Forum 2004).

Comment: The proposal is not a mobile phone tower. The applicant has supplied supporting information in regard to emission levels.

A facility should not be located in an area where in the opinion of Council the landform, vegetation or features of a proposed location have special aesthetic, architectural, ecological or conservational value, or where such features will not adequately screen or reduce the impact of the facility.

Comment: The proposal is considered compatible with the heavy industrial zone.

PART E – GENERAL (CITY WIDE) CONTROLS

CHAPTER E20 CONTAMINATED LAND MANAGEMENT

The site has never been used for heavy industry. It is probable the site is not contaminated although Council's property records flag it as such. The proposal will not be affected by contaminated land, if any, on site.

11 Wollongong Section 94A Development Contributions Plan (2009)

The estimated cost of works is \$100,000 and a section 94A levy is therefore applicable/applicable as the threshold figure is \$100,000. The proposal has been assessed against this plan and a contribution fee of \$1,000 applies to the proposal should the proposal be approved.

12 Consultation

Internal consultation

Environment

Council's Environment Division advises that historically, green and golden bell frogs may have dispersed over this property. Therefore, should the application be approved, conditions specifically about green and golden bell frogs are recommended.

Other conditions have been recommended in regard to the specific operations of the communications tower.

External consultation

Railcorp have reviewed the proposal and have not objected to the proposal subject to conditions.

13 RECOMMENDATION

This application has been assessed having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies. It is recommended Development Application DA-2010/860 for the 'Installation of a 40m communications tower' be approved subject to the consent conditions outlined in Attachment 4.

Attachments:

- 1 Aerial Map
- 2 Zoning Map
- 3 Plans
- 4 Draft Consent Conditions
- 5 Statement Of Environmental Effects