



29 March 2019

Sharon Pope  
Development Assessment  
Muswellbrook Shire Council  
PO Box 122  
Muswellbrook NSW 2333

Dear Ms S Pope,

**RE: Development Application No. 76/2018 – Installation of New Telecommunications Facility, Lot 18 DP1075238 REF: Park – Hill Street, Muswellbrook 2333.**

I am writing in reference to the above development application for telecommunications facility at Hill Street, Muswellbrook.

This is a formal written request prepared in accordance with Clause 4.6 of the Muswellbrook Local Environmental Plan 2009 to support the application for telecommunications facility.

Specifically, the request seeks approval to vary the height of buildings development standard in Clause 4.3 of the Muswellbrook Local Environmental Plan 2009. For the avoidance of doubt, the development standard is not specifically excluded from the operation of Clause 4.6 of Muswellbrook Local Environmental Plan 2009.

The objectives of Clause 4.6 (1) are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

As the following request demonstrates, by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application, compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard.

The submission seeks approval for a variation to the development standard as it applies to the proposed building on the following basis:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. There are sufficient environmental planning grounds to justify contravening the development standard;
3. The proposed contravention of the development standard will not raise any matter of significance for State or regional environmental planning, and
4. The proposed development will be in the public interest on the basis it is consistent with the objectives of the particular standard and the objectives for development within the zone.

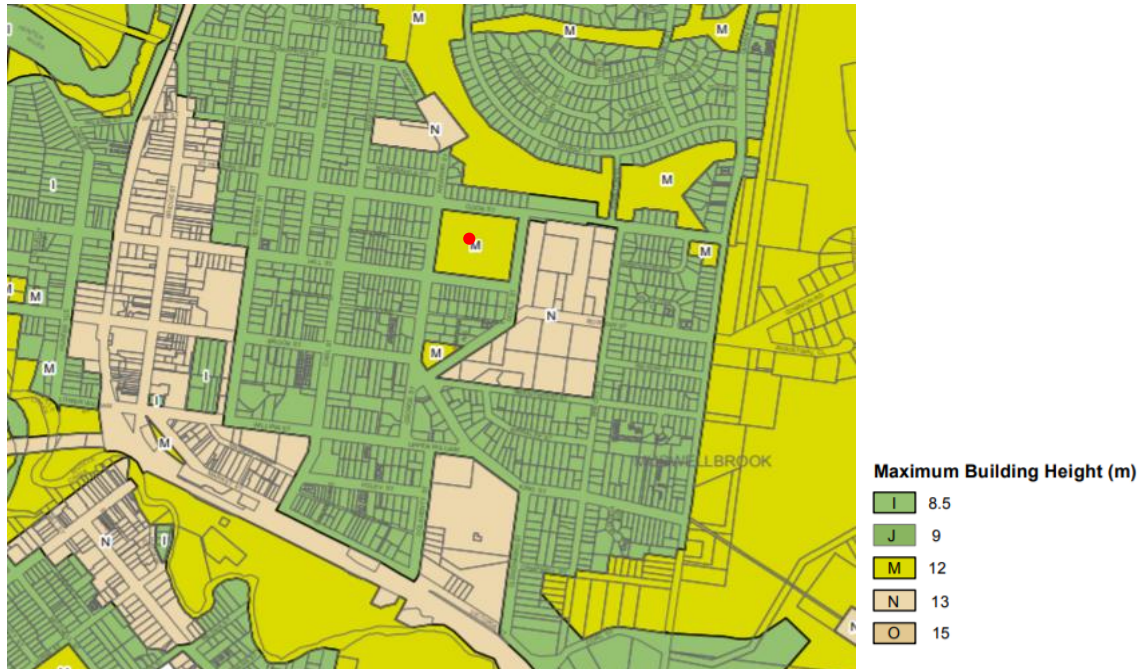
**Development Standard to which this request applies**

This proposal requests height of buildings development standard in Clause 4.3 of the Muswellbrook Local Environmental Plan 2009. 4.3(2) of the LEP states

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*



As shown on **Figure 1**, the respective Height of Building (HoB) map identifies the site as being within Category M, which has a height limit of **12 metres**.



**Figure 1** – Extract from Muswellbrook LEP 2009 Building Height Map

As indicated under Clause 4.3(1), the objectives of the development standard are:

- (a) to limit the height of buildings,
- (b) to promote development that is compatible with the height of surrounding development and conforms to and reflects natural landforms by stepping development on sloping land to follow the natural gradient,
- (c) to promote the retention and, if appropriate, sharing of existing views,
- (d) to maintain solar access to new and existing dwellings and public recreation areas and to promote solar access to new buildings,
- (e) to maintain privacy for residents of existing dwellings and promote privacy for residents of new buildings.

#### **Nature of the departure from the standard**

As indicated on the elevation plan prepared by Kordia Solutions provided as **Figure 2**, the proposed facility exceeds the 12 metre maximum height allowable under the HoB map. This encroachment represents an increase in height 14.3 metres above the height limit for the subject property.

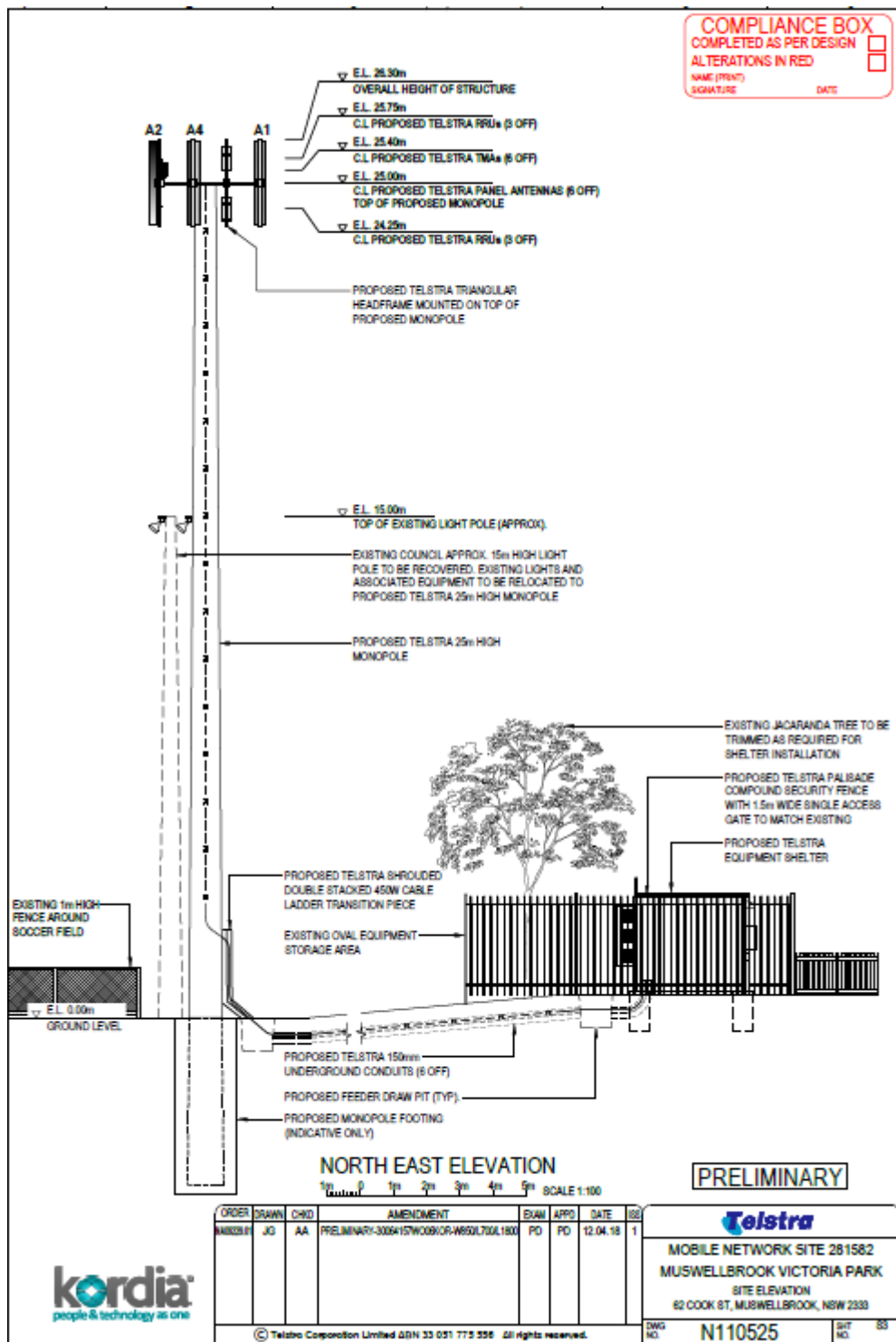


Figure 2: Excerpt from Proposed Plans provided within SEE.

Building height (or **height of building**) is defined within the planning scheme as:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or



- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Based on the definition above it is considered that a telecommunications facilities such as the proposed may be deemed to be exempt from the building height limitations as the proposed involves a communication device/mast.

**Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (4.6(3a))**

The proposed telecommunications facility has been designed to the minimum height to achieve the coverage objective for the Muswellbrook area. This will ensure that the best level of coverage can be provided to the locality, without constructing to a height which would offer no additional benefit to the service area.

Telstra endeavours to balance the reasonable coverage objectives (including area of service, power levels needed to provide quality of service, and the amount of usage the planned service must handle) with local government telecommunications planning policies (including those relating to minimisation of visual impact to public spaces and nearby residences). In this instance, the height of 26.3 metres is required to achieve the coverage objectives for the area and it is not considered it would result in adverse impacts on the surrounds.

Due to the location of the facility within the lot, the encroachments don't result in any adverse impact in terms of overshadowing. Furthermore, given the proposed facility is an unmanned and remotely operated facility, it will not result in any impacts on privacy on existing dwellings surrounding the parkland. The proposed facility is setback from all boundaries, ensuring a reduced impact on residential premises.

Limiting the height of the facility to that required by the development standard is not feasible as it would result in facility that is unable to achieve the coverage objectives.

**There are sufficient environmental planning grounds to justify contravening the development standard (4.6(3b))**

It is considered that the proposed development has sufficient planning grounds to justify the development standard. These are outlined below:

**Visual Impact:**

Freestanding mobile phone base stations are a common feature within urban and rural landscapes. The justification behind the use of a freestanding structure is to provide line of site coverage within flat and undulating topography. Specific design elements have been included within the planning of the proposed Muswellbrook facility, inclusive of:

- Limiting the height of the proposal to 26.30m. This will ensure that the best level of coverage can be provided to the locality, without constructing to a height which would offer no additional benefit to the service area.
- Ground based equipment is to be located directly adjacent to the existing amenities building. This is to minimise the bulk and scale of the proposal in context to the surrounding environment.
- The placement of the proposed structure adjoining to other lighting structures to reduce the proliferation of tall structures.
- The siting and location of the proposal has been taken in to consideration during the site selection process in order to ensure that the site does not result in any undue visual intrusion towards surrounding viewing corridors.

Additionally, the proposed facility entails a replacement of an existing light pole with a new higher structure to accommodate the telecommunications equipment. This will result in no new additional tall structures within the parkland and whilst the facility is at an increase height, any additional impacts are considered negligible.

**Overshadowing**



The proposed development involves a slimline monopole structure and will not result in any undue impacts for overshadowing. As the proposal involves the replacement of an existing light pole with a new higher structure it is considered that any additional shadowing impacts will be negligible. As the proposal is located on a large open recreation lot and a separated from surrounding uses, the proposed facility will not result in any overshadowing impacts on private dwellings or private recreation spaces.

#### **Privacy**

The proposed development will not result in a loss of privacy for residential dwellings within the area. The proposed facility is an unmanned and remotely operated and will not result in the overlooking or loss of privacy.

#### **Contravention of the development standard raises any matter of significance for State or regional environmental planning 4.6 (5a)**

There is no identified outcome which would be prejudicial to planning matters of State or Regional significance that would result as a consequence of varying the development standard as proposed by this application.

#### **The proposed development will be in the public interest on the basis it is consistent with the objectives of the particular standard and the objectives for development within the zone 4.6(4a(ii))**

The proposed development will involve the construction of telecommunications facility within RE-1 zone, comprising:

- The swap-out of the existing 15m light pole structure for a new 25m monopole with a triangular headframe; and
- The relocation of the existing lighting and associated equipment on the new 25m monopole at an elevation of 15m.

As outlined in the SEE for the site, the proposed development has been sited and designed to respond to a number of key considerations of the subject property. This includes replacement of existing infrastructure and will not result in a proliferation of tall structures on the property. Additionally, the facility has been sited within the centre of the lot and allows for separation from adjoining uses and existing uses, thus reducing the impact of the facility on the area.

However, it is recognised that, similar to all forms of development, telecommunications facilities can have a visual effect. This visual effect can be attributed to two unavoidable characteristics of mobile phone base stations:

- They are structures which generally protrude above other structures; and
- They need to be located at suitable heights in order to operate effectively.

Notwithstanding this, telecommunication facilities are now an accepted part of the landscape (much like power poles and powerlines) as they provide a necessary service and essentially contribute to the wellbeing of a community. With consumer demands reflecting an increase in demand for speed and data bandwidth, Telstra requires a new site at subject location to ensure that this level of service provision can be maintained within the defined coverage improvement objectives.

The proposed development complies with the objectives of the development standard for building heights; each objective is addressed below:

#### ***(b) to promote development that is compatible with the height of surrounding development and conforms to and reflects natural landforms by stepping development on sloping land to follow the natural gradient***

The proposed development is located on flat land which is used for recreation purposes. The facility replaces an existing light pole. The area and subject lot contains other forms of utilities / vertical structures including light/power poles. Given the presence of vegetation within the subject property and along the road frontages it is considered unlikely that facility will result in any adverse impacts on the adjoining area.



***(c) to promote the retention and, if appropriate, sharing of existing views,***

Due to the slim line nature of the facility and as the proposal involves the swap out of an existing vertical structure, the facility is not considered to adversely impact views to or from the property.

***(d) to maintain solar access to new and existing dwellings and public recreation areas and to promote solar access to new buildings***

The proposed facility is a slim line monopole, and will not adversely impact of solar access to the parkland area. As the proposal involves the replacement of an existing light pole with a new higher structure it is considered that any additional shadowing impacts will be negligible. As the proposal is located on a large open recreation lot and a separated from surrounding uses, the proposed facility will not result in any overshadowing impacts on private dwellings or private recreation spaces.

***(e) to maintain privacy for residents of existing dwellings and promote privacy for residents of new buildings.***

The proposed development will not result in a loss of privacy for residential dwellings within the area. The proposed facility is an unmanned and remotely operated and will not result in the overlooking or loss of privacy.

Futhermore, as outlined in the SEE, the facility complies with the objectives of the RE1 – Public Recreation zone.

**Conclusion**

The proposed variation is considered consistent with the objectives of Clause 4.6 of the LEP which provides an appropriate degree of flexibility in the application of development standards to permit a particular development where warranted. To this end, the preceding submission satisfies the considerations requiring assessment in the respective sub-clauses and demonstrates as follows:

1. strict compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. there are sufficient environmental planning grounds to justify contravening the development standard;
3. the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the R2 zone in which the development is proposed to be carried out; and
4. departure from the standard on this occasion will achieve an improved built form outcome, have a negligible impact on any surrounding residences or properties, and will not raise any matter of significance for state or regional environmental planning.

The request for a departure from the development standard in relation to the maximum height of buildings contained in Clause 4.3(2) of Muswellbrook LEP 2009 to permit the proposed development is justified.

We look forward to your consideration of this matter.

Regards,

Caitlin Spencer  
Planning Consultant  
Kordia Solutions Australia.