

## COUNCIL ASSESSMENT REPORT

Panel Reference	2019HCC011
DA Number	DA 76-2018
LGA	Muswellbrook
Proposed Development	Telecommunications Tower
Street Address	Victoria Park, Hill Street, Muswellbrook
Applicant/Owner	Kordia Solutions Australia (applicant) Unit 1D 400 Nudgee Road HENDRA QLD 4011  Muswellbrook Shire Council (owner)
Date of DA lodgement	
Number of Submissions	12 submissions were received during the notification period. These submissions were provided to the applicant and a response was requested.
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Pursuant to section 377 of the Local Government Act 1993, Council delegates the power to make a determination as Consent Authority under Section 4.16 of the Environmental Planning and Assessment Act, 1979 of Development Application No. 76/2018 proposing a telecommunications facility at Lot 18 DP 1075238, Victoria Park, Hill Street, Muswellbrook to the Hunter and Central Coast Regional Planning Panel.
List of all relevant s4.15(1)(a) matters	See attached s4.15 assessment
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> <li>• Statement of Environmental Effects</li> <li>• plans</li> <li>• clause 4.6 justification (MLEP 2009 sets a maximum building height of 12m in relation to the land. The final height of the tower will be 26.30m. The visual impact of the structure is addressed within reports lodged in support of the development proposal).</li> <li>• Response to matters raised in submissions</li> <li>• Council report of 11 December 2018</li> </ul>
Report prepared by	Libby Cumming
Report date	28 November 2018

### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes (is within the SEE)

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (\$7.24)?

No

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

### Conditions

Have draft conditions been provided to the applicant for comment?

Yes, with

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

**Council report**

# DEVELOPMENT ASSESSMENT REPORT

## APPLICATION SUMMARY

<i>Application Number</i>	<i>Applicant</i>	<i>Owner</i>
DA 76/2018	Kordia Solutions Australia Unit 1D 400 Nudgee Road HENDRA QLD 4011	Muswellbrook Shire Council
<i><b>Date Lodged</b></i>		
27.8.2018		
<i><b>Address:</b></i>	Victoria Park, Hill Street, Muswellbrook	
<i><b>Title:</b></i>	Lot 18 DP 1075238	
<i><b>Proposal:</b></i>	Installation of a New Telecommunication Facility	
<i><b>Political Gift &amp; Donation Disclosure:</b></i>	No disclosure of a political donation or gift has been made in relation to this application.	
<b>KEY CONSIDERATIONS</b>		
<div>1. Suitability of location of telecommunication facility.</div> <div>2. Twelve submissions of objections.</div> <div>3. Response from applicant to submissions.</div>		
<b>RECOMMENDATION</b>		
That the application be approved subject to conditions.		

## 1. SITE AND LOCALITY DESCRIPTION

The proposed development relates to Lot 18 DP 1075238, known as Victoria Park, Hill Street Muswellbrook. Victoria Park is a sportsground which is bounded by Hill, Greg, Bowman and Cook Streets. The sportsground contains two sporting fields, and amenity buildings. The site is bounded by a Cemetery to the east and residential development on the remaining sides.

The most recent development application on the site was for a canteen (DA10193/1996).

An aerial image of the property has been included.



## 2. DESCRIPTION OF PROPOSAL

The development will replace an existing 15m light pole situated on the soccer field segment within Victoria Park and is adjoining the Cricket Oval to the west and Muswellbrook Cemetery to the east. The development will consist of the following:

- Excavation of site footings and the provision of fencing;
- The swap-out of the existing 15m light pole structure for a new 25m monopole with a triangular headframe;
- The relocation of the existing lighting and associated equipment on the new 25m monopole at an elevation of 15m;
- The installation of six (6) new panel antennas mounted on the aforementioned triangular headframe at an elevation of 25m;
- The installation of six (6) new Tower Mounted Amplifiers (TMAs) mounted on the aforementioned triangular headframe at an elevation of 25.4m;
- The installation of six (6) new Radio Remote Units (RRUs) mounted on the aforementioned triangular headframe at an elevation of 24.25m and 25.75m;
- The installation of six (6) of 150mm wide conduits to run underground for approx. 20m
- The installation of a 3.15m (L) x 2.38m (W) equipment shelter within the proposed lease area;
- The installation of a palisade compound security fence surrounding the proposed lease area (6.5m x 4m) with 1.5m wide single access gate;
- The installation of associated ancillary equipment including transceivers, amplifiers, antenna mounts, cable trays, feeders, cabling, combiners, diplexers, splitters, couplers, jumpers, filters, electrical equipment, handrails, kick plates, signage, bollards and other associated equipment; and
- Colour-matching the proposed telecommunication equipment to match surrounding background and facade where appropriate or as advised by council, otherwise painted in standard factory colour ('Shale Grey')

## 3. REFERRALS

The application was referred to:

<b>Internal</b>					
<b>Department</b>	<b>Required</b>		<b>Responded</b>		<b>Comment</b>
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	
<b>Building</b>		x			
<b>Environmental Health</b>		x			
<b>Heritage Advisor</b>		x			
<b>Water &amp; Waste</b>		x			
<b>Community Infrastructure</b>		x			
<b>Strategic Planning</b>		x			
<b>Community &amp; Cultural Services</b>		x			
<b>Traffic Committee</b>		x			
<b>Other</b>		x			

<b>External</b>					
<b>Agency</b>	<b>Required</b>		<b>Responded</b>		<b>Comment</b>
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	
<i>Roads and Maritime Services</i>		x			
<i>NSW Rural Fire Service</i>		x			
<i>Office of Environment &amp; Heritage</i>		x			
<i>Department of Primary Industries - Lands</i>		x			
<i>Department of Primary Industries - Water</i>		x			
<i>NSW Police</i>		x			
<i>Environment Protection Authority</i>		x			
<i>Local Land Services</i>		x			
<i>NSW Heritage Office</i>		x			
<i>Mine Subsidence Board</i>	x		x		Approval received. – 29.11.2018
<i>Department of Planning and Environment</i>		x			
<i>Department of Community Services</i>		x			

## 4. ASSESSMENT

This report provides an assessment of the material presented in the Application against the relevant State and local planning legislation and policy.

### SECTION 4.15 MATTERS FOR CONSIDERATION

#### *Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument (EPI)*

The following EPIs, DCPs, Codes and Policies are relevant to this Application:

#### **1. State Environmental Planning Policies**

All State Environmental Planning Policies which apply to the land as per the NSW Planning Portal are considered below.

<b>State Environmental Planning Policy</b>	<b>Applicable</b>		<b>Compliance</b>		<b>Comment</b>
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	
<i>SEPP (Affordable Renting Housing) 2009</i>		x			
<i>SEPP (Building Sustainability Index: BASIX) 2004</i>		x			
<i>SEPP (Exempt and Complying Development Codes) 2008</i>		x			
<i>SEPP (Housing for Seniors or People with Disability) 2004</i>		x			

State Environmental Planning Policy	Applicable		Compliance		Comment
	Yes	No	Yes	No	
SEPP (Infrastructure) 2007	x		x		It is considered that the proposed telecommunications facility is consistent with this SEPP, refer to the table below for detailed discussion.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007		x			
SEPP (Miscellaneous Consent Provisions) 2007		x			
SEPP 1 – Development Standards		x			
SEPP 21 - Caravan Parks		x			
SEPP 30 - Intensive Agriculture		x			
SEPP 33 - Hazardous and Offensive Development		x			
SEPP 36 - Manufactured Home Estates		x			
SEPP 44 - Koala Habitat Protection	x		x		There is no koala habitat neither is there potential koala habitat on the land, therefore a Koala Plan of Management is not required.
SEPP 50 – Canal Estate Development		x			
SEPP 55 - Remediation of Land	x		x		A preliminary inspection of the property did not identify any visible contamination and it is considered unlikely that any potential contamination would impact on the sporting fields or the proposed telecommunications facility.
SEPP 62 - Sustainable Aquaculture		x			
SEPP 64 - Advertising and Signage		x			
SEPP 65 - Design Quality of Residential Flat Development		x			
SEPP (Vegetation in Non-Rural Areas) 2017	x		x		Applies to all clearing of native vegetation that exceeds the offset thresholds in urban areas and environmental conservation zones. There is no clearing of native vegetation in this instance

## SEPP (Infrastructure) 2007

Clause	Comment
113 Definitions	<p><b>telecommunications facility</b> means:</p> <p>(a) any part of the infrastructure of a telecommunications network, or</p> <p>(b) any line, cable, optical fibre, fibre access node, interconnect point, equipment, apparatus, tower, mast, antenna, dish, tunnel, duct, hole, pit, pole or other structure in connection with a telecommunications network, or</p> <p>(c) any other thing used in or in connection with a telecommunications network.</p>

The proposal meets this definition

**114 Development permitted without consent**

Not Applicable

**114A Development permitted without consent – submarine cables**

Not Applicable

**115 Development permitted with consent**

Applicable – The development becomes permissible development in any zone subject to Council consent. – Clause 115(1)

In regards to site selection, the applicant indicates that the site meets the selection criteria stipulated within the *NSW Telecommunications Facilities Guideline including Broadband (July 2010)*. Below is a table as supplied by the applicant addressing each principle. – Clause 115(3)

**Extract from Statement of Environmental Effects**

<b>Principle 1 – A Telecommunications Facility should be sited in order to minimize visual impact:</b>	
<b>Principle, as outlined:</b>	<b>Response:</b>
<i>(a) As far as practical, a telecommunications facility that is to be mounted on an existing building or structure should be integrated with the design and appearance of the building or structure.</i>	The proposal entails a replacement of an existing light pole with a new, higher structure, to accommodate the telecommunications equipment.
<i>(b) The visual impact of telecommunications facilities should be minimised, visual clutter is to be reduced particularly on tops of buildings, and their physical dimensions (including support mounts) should be sympathetic to the scale and height of the building to which it is to be attached, and sympathetic to adjacent buildings.</i>	<p>The proposed structure is positioned amongst existing high bearing light pole structures to ensure minimal visual impact on the surrounding environs. The site is situated in an open space area and it is considered that the proposal will not impact on the overall landscape vista encompassed by the location. It is also believed the proposal will dissolve into the façade of the sportsground land uses, negating any potential visual impacts.</p> <p>It is considered that the proposed facility is appropriately located in the setting considering and will be partially screened by existing vegetation, reducing any adverse visual impacts for surrounding land users</p>
<i>(c) Where telecommunications facilities protrude from a building or structure and are predominantly backgrounded against the sky, the facility and their support mounts should be either the same as the prevailing colour of the host building or structure, or a neutral colour such as grey should be used.</i>	<p>The proposed equipment shelter is situated in amongst a collection of trees and other landscaping vegetation and adjacent to an existing amenities building, which will obscure the ancillary facilities (including fencing) from nearby viewpoints.</p> <p>Additionally, it will be finished with neutral colouring to flush into the background of the surrounding land uses</p>
<i>(e) A telecommunications facility should be located and designed to respond appropriately to its rural landscape setting.</i>	Not applicable. The site is not located in a rural setting.
<i>(f) A telecommunications facility located on, or adjacent to, a State or local heritage item or within a heritage conservation area, should be sited and designed with external colours, finishes and scale sympathetic to those of the heritage item or conservation area.</i>	Not applicable. The site is not located on or adjacent to a heritage item and/or heritage conservation area.



<i>(g) A telecommunications facility should be located so as to minimise or avoid the obstruction of a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land.</i>	<p>The proposal will not obstruct any significant views, vistas, heritage items, landmarks, panoramas or generate any negative impacts on the surrounding streetscape.</p> <p>The site is partially screened by natural vegetation which will repeal any adverse visual impacts from surrounding views.</p> <p>Further information in relation to visual impacts is detailed within Section 5.1 of this report.</p>
<i>(h) The relevant local government authority must be consulted where the pruning, lopping, or removal of any tree or other vegetation would contravene a Tree Preservation Order applying to the land or where a permit or development consent is required.</i>	The proposal requires light trimming of an existing Jacaranda Tree to facilitate the installation of the new equipment shelter. These trimming activities will not contravene any tree preservation orders or have any ramifications to any protected vegetation.
<i>(i) A telecommunications facility that is no longer required is to be removed and the site restored, to a condition that is similar to its condition before the facility was constructed.</i>	The existing 15m light pole will be removed and the site will be restored to match its surrounding landscape.
<i>(k) The siting and design of telecommunications facilities should be in accordance with any relevant Industry Design Guides.</i>	The siting and design of the proposed telecommunications facility is entirely compliant with the New South Wales Telecommunications Facility Guideline, as released by the NSW Department of Planning and Infrastructure
<b>Principle 2 – Telecommunications facilities should be co-located wherever possible</b>	
<b>Principle, as outlined:</b>	<b>Response:</b>
<i>(a) Telecommunications lines are to be located, as far as practical, underground or within an existing underground conduit or duct.</i>	All proposed conduit will be installed underground.
<i>(b) Overhead lines, antennas and ancillary telecommunications facilities should, where practical, be collocated or attached to existing structures such as buildings, public utility structures, poles, towers or other radiocommunications equipment to minimise the proliferation of telecommunication facilities and unnecessary clutter.</i>	The subject facility will situated on a swapped out light pole structure in order to reduce unnecessary clutter.
<i>(c) Towers may be extended for the purposes of co-location.</i>	Not applicable. The proposal does not require an extension of an existing structure but rather the replacement.
<i>d) The extension of an existing tower must be considered as a practical co-location solution prior to building new towers.</i>	Not applicable. The proposal does not require an extension of an existing structure but rather the replacement.
<i>(e) If a facility is proposed not to be co-located the proponent must demonstrate that co-location is not practicable.</i>	There are no viable co-location opportunities within the surrounding locale as demonstrated within Section 1.2 of this report.
<i>(f) If the development is for a co-location purpose, then any new telecommunications facility must be designed, installed and operated so that the resultant cumulative levels of radio frequency emissions of the collocated telecommunications facilities are within the maximum human exposure levels set out in the Radiation Protection Standard.</i>	Not Applicable. The proposed site does not involve a co-location on an existing telecommunications facility
<b>Principle 3 – Health standards for exposure to radio emissions will be met</b>	
<b>Principle, as outlined:</b>	<b>Response:</b>
<i>(a) A telecommunications facility must be designed, installed and operated so that the maximum human exposure levels to radiofrequency emissions comply with Radiation Protection Standard.</i>	<p>It is the legal obligation for any carrier to ensure that any telecommunications equipment is operated within the human exposure limits within the Radio Protection Standard.</p> <p>The maximum human exposure levels have been calculated to be 1.046% of the public exposure limit. Refer to Appendix B for the complete EME Environmental Report</p>

<i>(b) An EME Environmental Report shall be produced by the proponent of development to which the Mobile Phone Network Code applies in terms of design, siting of facilities and notifications. The Report is to be in the format required by the Australian Radiation Protection Nuclear Safety Agency. It is to show the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and demonstrate compliance with the Mobile Phone Networks Code.</i>	<p>An EME Environmental Report has been included within Appendix B of this document. The EME Environmental Report is in accordance with the format prescribed by Australian Radiation Protection Nuclear Safety Agency.</p> <p>Additionally, the EME Environmental Report is a publically accessible document which can be retrieved from:  <a href="http://www.rfnsa.com.au/2333021">http://www.rfnsa.com.au/2333021</a></p>
<b>Principle 4 – Minimize disturbance and risk and maximize compliance</b>	
<b>Principle, as outlined:</b>	<b>Response:</b>
<i>(a) The siting and height of any telecommunications facility must comply with any relevant site and height requirements specified by the Civil Aviation Regulations 1988 and the Airports (Protection of Airspace) Regulations 1996 of the Commonwealth. It must not penetrate any obstacle limitation surface shown on any relevant Obstacle Limitation Surface Plan that has been prepared by the operator of an aerodrome or airport operating within 30 kilometres of the proposed development and reported to the Civil Aviation Safety Authority Australia.</i>	<p>The proposal is compliant with the Civil Aviation Regulations 1988 and the Airports (Protection of Airspace) Regulations 1996.</p> <p>The proposal does not penetrate any Obstacle Limitation Surface.</p>
<i>(b) The telecommunications facility is not to cause adverse radio frequency interference with any airport, port or Commonwealth Defence navigational or communications equipment, including the Morundah Communication Facility, Riverina.</i>	The proposed equipment at the subject site is licensed as per ACMA regulations. As a result, there is to be no interference with other civil and military communications facilities.
<i>(c) The telecommunications facility and ancillary facilities are to be carried out in accordance with the applicable specifications (if any) of the manufacturers for the installation of such equipment.</i>	The proposed equipment is to be installed as per the manufacturer's specifications.
<i>(d) The telecommunications facility is not to affect the structural integrity of any building on which it is erected.</i>	Not applicable. Proposal is a standalone structure
<i>(e) The telecommunications facility is to be erected wholly within the boundaries of a property where the landowner has agreed to the facility being located on the land.</i>	The site is to be located within the boundaries of Victoria Park and will not encroach on surrounding property boundaries.
<i>(f) The carrying out of construction of the telecommunications facilities must be in accordance with all relevant regulations of the Blue Book – 'Managing Urban Stormwater: Soils and Construction' (Landcom 2004), or its replacement.</i>	The construction of the proposal will adhere to and comply with the regulations set out within the Blue Book – 'Managing Urban Stormwater: Soils and Construction' (Landcom 2004).
<i>(g) Obstruction or risks to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction are to be mitigated.</i>	The site will be fenced during construction.
<i>(h) Where practical, work is to be carried out during times that cause minimum disruption to adjoining properties and public access. Hours of work are to be restricted to between 7.00am and 5.00pm, Mondays to Saturdays, with no work on Sundays and public holidays.</i>	Construction works will be conducted between 7.00am and 5.00pm, Mondays to Saturdays or as per the recommended hours stipulated by Council. Consultation with council will be undertaken throughout the construction process.

<i>(i) Traffic control measures are to be taken during construction in accordance with Australian Standard S1742.3-2002 Manual of uniform traffic control devices – Traffic control devices on roads.</i>	Any required traffic control will be conducted in accordance with the relevant Australian Standard S 1742.3-2002 Manual of uniform traffic control devices – Traffic control devices on roads
<i>(j) Open trenching should be guarded in accordance with Australian Standard Section 93.080 – Road Engineering AS1165 – 1982 – Traffic hazard warning lamps.</i>	Open trenching for the installation of underground power and fibre will be executed in compliance with the Australian Standard Section 93.080 – Road Engineering AS1165 – 1982 – Traffic hazard warning lamps.
<i>(k) Disturbance to flora and fauna should be minimised and the land is to be restored to a condition that is similar to its condition before the work was carried out.</i>	Not applicable. The proposal will not impact any significant flora or fauna.
<i>(l) The likelihood of impacting on threatened species and communities should be identified in consultation with relevant state or local government authorities and disturbance to identified species and communities avoided wherever possible.</i>	An EPBC Act Protected Matters Report was obtained for the subject site and the proposal will not impact on any of the threatened species identified within the report. A copy of this report is attached in Appendix D.
<i>(m) The likelihood of harming an Aboriginal Place and / or Aboriginal object should be identified. Approvals from the Department of Environment, Climate Change and Water (DECCW) must be obtained where impact is likely, or Aboriginal objects are found.</i>	Not Applicable. No items or areas of Aboriginal significance were identified on the proposed allotment. Refer to Appendix E for Aboriginal Heritage Information (AHIMS) report
<i>(n) Street furniture, paving or other existing facilities removed or damaged during construction should be reinstated (at the telecommunications carrier's expense) to at least the same condition as that which existed prior to the telecommunications facility being installed.</i>	Not applicable. The proposal will not impede on any street furniture, paving or other existing facilities.

**116 Exempt development**

Not Applicable

**116A Complying Development**

Not Complying Development

**116B Complying Development – additional conditions**

Not Applicable

**116C Relationship of this Division with Telecommunications Act 1997 of Commonwealth**

Compliant

**116D Application of amendments made by SEPP (Infrastructure) Amendment (Telecommunications Facilities) 2010**

Complaint – This assessment does take the *NSW Telecommunications Facilities Guideline including Broadband (July 2010)* as per Clause 115(3).

**Comment**

This development is clearly compliant with the provisions of State Environmental Planning Policy (Infrastructure) 2007 which overrides the provisions of the Muswellbrook Local Environmental Plan 2009.

## **2. Muswellbrook Local Environmental Plan 2009 (MLEP 2009)**

### **Land Use Zone and Permitted Land Use**

The development site is zoned RE1 Public Recreation pursuant to MLEP 2009. The proposal is best defined as a telecommunications facility, which is prohibited in the RE1 Zone. This application is requesting consent under Clauses 113 and 115 of State Environmental Planning Policy (Infrastructure) 2007.

## Zone Objectives – RE1 Public Recreation

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To encourage the development of public open spaces in a way that addresses the community's diverse recreation needs.
- To identify land that is suitable for future public recreation use and that can be brought into public ownership as a consequence of development contributions.
- To provide linked open space for ecosystem continuity, local community recreation, off-road transport and waterway protection.
- To provide space for integrated stormwater treatment devices for flow and water quality management, whilst enhancing urban and rural amenity.

It is considered that the development proposal would not hinder use of the site for recreation purposes.

## Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009

<b>Part 1 Preliminary</b>					
<b>Clause</b>	<b>Applicable</b>		<b>Compliance</b>		<b>Comment</b>
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	
<b>1.1 Name of Plan</b>		x			Muswellbrook LEP 2009
<b>1.1AA Commencement</b>		x			17 April 2009
<b>1.2 Aims of Plan</b>	x		x		This development contributes to the intent of the aims based on the community benefit through a improvement of existing infrastructure provision.
<b>1.3 Land to which Plan applies</b>		x			Muswellbrook LGA
<b>1.4 Definitions</b>	x		X		<b>telecommunications facility</b> means: a) any part of the infrastructure of a telecommunications network, or b) any line, cable, optical fibre, fibre access node, interconnect point equipment, apparatus, tower, mast, antenna, dish, tunnel, duct, hole, pit, pole or other structure in connection with a telecommunications network, or c) (c) any other thing used in or in connection with a telecommunications network.
<b>1.5 Notes</b>		x			
<b>1.6 Consent authority</b>		x			Muswellbrook Shire Council
<b>1.7 Maps</b>		x			
<b>1.8 Repeal of planning instruments applying to land</b>		x			
<b>1.8A Savings provision relating to pending development applications</b>		x			
<b>1.9 Application of SEPPs</b>		x			
<b>1.9A Suspension of covenants, agreements and instruments</b>		x			

## Part 2 Permitted or prohibited development

Clause	Applicable		Compliance		Comment
	Yes	No	Yes	No	
2.1 Land use zones	x			x	RE1 Public Recreation
2.2 Zoning of land to which Plan applies	x			x	RE1 Public Recreation
2.3 Zone objectives and Land Use Table	x			x	The development does not address or meet the objectives of the zone.
2.4 Unzoned land		x			Not applicable
2.5 Additional permitted uses for particular land		x			
2.6 Subdivision—consent requirements		x			
2.7 Demolition requires development consent		x			
2.8 Temporary use of land		x			

## Part 3 Exempt and complying development

Clause	Applicable		Compliance		Comment
	Yes	No	Yes	No	
3.1 Exempt development		x			
3.2 Complying development		x			
3.3 Environmentally sensitive areas excluded		x			

## Part 4 Principal development standards

Clause	Applicable		Compliance		Comment
	Yes	No	Yes	No	
4.1 Minimum subdivision lot size		x			
4.1AA Minimum subdivision lot size for community title schemes		x			
4.2 Rural subdivision		x			
4.3 Height of buildings	x			x	<p>MLEP 2009 sets a maximum building height of 12m in relation to the land. The final height of the tower will be 26.30m, which is 11.3m higher than the existing light which will be replaced by the tower structure. The visual impact of the structure is addressed within reports lodged in support of the development proposal.</p> <p>The site is partially screened by natural vegetation which will lessen the visual impact.</p>
4.4 Floor space ratio	x		x		MLEP 2009 specifies a floor space ratio of 0.5 in relation to the land. The proposal does not involve building works that would result in floor space

					culmination of all buildings onsite to be greater than 50% of the site.
<b>4.5 Calculation of floor space ratio and site area</b>		x			
<b>4.6 Exceptions to development standards</b>		x			

## Part 5 Miscellaneous provisions

Clause	Applicable		Compliance		Comment
	Yes	No	Yes	No	
<b>5.1 Relevant acquisition authority</b>		x			
<b>5.2 Classification and reclassification of public land</b>		x			
<b>5.3 Development near zone boundaries</b>		x			
<b>5.4 Controls relating to miscellaneous permissible uses</b>		x			
<b>5.5 Development within the coastal zone</b>	Repealed				
<b>5.6 Architectural roof features</b>		x			
<b>5.7 Development below mean high water mark</b>		x			
<b>5.8 Conversion of fire alarms</b>		x			
<b>5.9 Preservation of trees or vegetation</b>	Repealed				
<b>5.9AA Trees or vegetation not prescribed by development control plan</b>	Repealed				
<b>5.10 Heritage conservation</b>	x		x		<p>AHIMS report provided with no aboriginal heritage found within or within 50 metres of the property boundary.</p> <p>The property is not a listed item nor is it within a conservation area. It is not considered to impact on the heritage nature of any adjoining sites or conservation zones.</p>
<b>5.11 Bush fire hazard reduction</b>		x			
<b>5.12 Infrastructure development and use of existing buildings of the Crown</b>		x			
<b>5.13 Eco-tourist facilities</b>		x			

## Part 6 Urban release areas

Clause	Applicable		Compliance		Comment
	Yes	No	Yes	No	
<b>6.1 Arrangements for designated State public infrastructure</b>		x			
<b>6.2 Public utility infrastructure</b>		x			

<b>6.3 Development control plan</b>		x			
<b>6.4 Relationship between Part and remainder of Plan</b>		x			

## Part 7 Additional local provisions

Clause	Applicable		Compliance		Comment
	Yes	No	Yes	No	
7.1 Terrestrial biodiversity		x			
7.2 Subdivision in Zone RU1 Primary Production and Zone E3 Environmental Management		x			
7.3 Controls relating to rural worker's dwellings		x			
7.4 Subdivision in Zone R1 General Residential and Zone RU5 Village		x			
7.5 Erection of dwelling houses on land in certain rural and environmental protection zones		x			
7.6 Earthworks		x			
7.7 Development at Muswellbrook Showground		x			
7.8 Events permitted on public reserves and public roads without development consent.		x			

## Schedules

1 Additional permitted uses		x			
2 Exempt development		x			
3 Complying Development		x			
4 Classification & reclassification of public land		x			
5 Environmental heritage		x			

## SECTION 4.15(1)(a)(ii) THE PROVISIONS OF ANY DRAFT EPI

There are no current Planning Proposals which are applicable to this land.

## SECTION 4.15(1)(a)(iii) THE PROVISIONS OF ANY DEVELOPMENT CONTROL PLAN

### Section 3 – Site Analysis

It is considered that the documentation provided with the Development Application satisfies the provisions of Section 3 of the Muswellbrook DCP.

### Section 4 – Notification

In accordance with the provisions of Section 4 of the Muswellbrook DCP 2009, the Application was notified for a period of not less than fourteen days from 3 September 2018 until 20 September 2018. A notice was also placed in the local newspaper, the Hunter Valley News, at the commencement of the notification period.

Twelve submissions were received during the notification period. The issues raised in the submissions are addressed in this Report.



## Section 20 – Erosion and Sediment Control

Earthworks involved with the proposed development would be minimal and associated with establishing the footing location for the proposed building. The carrying out of these earthworks is not anticipated to create any issue in respect of the matters for consideration prescribed by this Clause and a condition would be imposed on any development consent to ensure the works are carried out in accordance with Council's standard requirements.

The management of all sediment and erosion control can be adequately conditioned within the development consent.

## Section 24 – Waste Management

A waste minimisation management plan has been prepared in relation to the proposed development. A review of the Plan indicates that it meets the criteria listed within this Section of the DCP.

## Section 25 – Stormwater Management

There will be minimal stormwater impact, with any stormwater runoff from the 7.5m<sup>2</sup> equipment shelter will be directed away from the structure.

## Section 94 Contributions Plan 2001

Not Applicable

## Section 94A Contributions Plan 2009

The capital investment value of the proposed development would be \$200,000. A Section 94A contribution in accordance with Council's Section 94A Contribution Plan would be applicable given the value of the proposed works would be more than \$100,000 and is a utility installation.

### **SECTION 4.15(1)(a)(iia) THE PROVISIONS OF ANY PLANNING AGREEMENT**

There are no planning agreements relevant to the subject Application.

### **SECTION 4.15(1)(a)(iv) THE PROVISIONS OF THE REGULATIONS**

Division 8A of the *Environmental Planning and Assessment Regulation 2000* applies to the development. There is no special requirement relating to this development.

### **SECTION 4.15(1)(a)(v) THE PROVISIONS OF ANY COASTAL ZONE MANAGEMENT PLAN**

This item is not relevant to the subject Application. The Application does not relate to a coastal area.

### **SECTION 4.15(1)(b) THE LIKELY IMPACTS OF THAT DEVELOPMENT**

The following **additional** matters were considered:

<b>Impact</b>	<b>Applicable</b>		<b>Compliance</b>		<b>Comment</b>
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	
<b>Context &amp; Setting</b>	x		x		Though not permissible under the MLLEP 2009, the state government has determined through the Infrastructure SEPP that the RE1 zone is a suitable location for the facility with Council consent. By replacing the existing light pole with the tower, it does limit the proliferation of tall structure in the area.
<b>Built Form</b>	x		x		The facility has been designed to be as minimal in impact as possible, and to utilize a small footprint (50m <sup>2</sup> ). The colours of the construction materials will ensure the facility blends as much as possible with the existing infrastructure onsite.

<b>Potential Impact on Adjacent Properties</b>	x		x		This will be minimal. All Australian health and construction standards will be met, with the closest dwelling being approximately 80 metres. There will be an improved mobile service in the area.
<b>Access, Traffic and Transport</b>	x		x		There will be minimal traffic created by this development. The existing carpark will be utilized for parking during construction, and as the site is unmanned, with a regular service vehicle arriving on a quarterly or on as needed basis.
<b>Existing Infrastructure</b>	x		x		The design has catered for the existing infrastructure onsite with the construction colours blending with those that are existing.
<b>Heritage</b>	x		x		No impact
<b>Flora &amp; Fauna</b>	x		x		No impact
<b>Noise and Vibration</b>	x		x		Minimal – the only noise will be that of a small air-conditioner used to in the equipment shelter. There will be noise during construction, but this will be for a small period of time only.
<b>Natural hazards</b>	x		x		Nil – the land is not affected by flooding or bushfire.
<b>Safety, Security, and Crime Prevention</b>	x		x		The equipment shelter is fenced and the tower is not able to be accessed by the general public.
<b>Social Impact on Locality</b>	x		x		The proposal will improve mobile phone coverage for the immediate and greater Muswellbrook Community. It will not impede on the current activities that are carried out within the sporting field complex.
<b>Economic Impact on the Locality</b>	x		x		Nil

#### **Comment**

Overall, it is considered that this development will have minimal environmental impact, and will not be detrimental to the users of the sporting fields nor the adjoin residents.

#### **SECTION 4.15(1)(c) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT**

Carriers and mobile phone network operators have an obligation under the Industry Deployment Code (C564:2011) to utilise and upgrade existing infrastructure as opposed to developing new sites. This was unachievable due to numerous constraints with alternative 5 sites being explored. None of these site either met the required coverage or were opposed by the landowner. Victoria Park was chosen as it met the coverage upgrade requirements and had minimal environmental impact. The applicant termed it as:

- *The proposed site location is appropriately situated amongst high-bearing existing light pole structures and will dissolve within the context ;*
- *The availability of viable connections to the power and transmission networks in the area;*
- *Visual impact – it is believed that the proposed site location will not result in the loss of amenity or the obstruction of viewing corridors to and from the proposed site;*
- *The proposed site entails a substantial amount of natural vegetation screening surrounding the site location;*
- *Town planning considerations (such as zoning, surrounding land uses, environmental significance, compliance with the planning scheme and visual impact);*
- *The proposed pole swap out will result in minimal adverse impacts as a result of construction. Construction will be undertaken during low traffic periods and be coordinated appropriately with council;*
- *Existing driveway access and carpark to site will negate any impacts to traffic flow during the construction phase;*

- *The location will offer a cost effective site solution whilst maximising coverage and mobile phone service provisions within the identified locality; and*
- *Tenure – obtaining an agreement with the land owner of the subject site provides surety in determining the location of a mobile phone base station. An agreement has been determined with the subject land owner and Telstra.*

It is considered that the development is suitable for the site characteristics, subject to consent conditions.

#### **SECTION 4.15(1)(d) ANY SUBMISSIONS MADE**

In accordance with the provisions of Section 4 of the Muswellbrook DCP 2009, the Application was notified for the period 3 September 2018 to 20 September 2018.

A total of 12 submissions were received during the notification period. These submissions were provided to the applicant and a response was requested.

**Table of Issues Raised within Submissions Received**

<b><i>Issue Raised</i></b>	<b><i>Planning Comment</i></b>
Health – Radiation Emissions - High Frequency Radio Waves – Electromagnetic Energy	All emissions are to Australian Health standards. Further, the Infrastructure SEPP requires that a condition be placed any approval stating that prior to construction the certifying authority receive: <ul style="list-style-type: none"> <li>a) a report in the format required by the Australian Radiation Protection and Nuclear Safety Agency that shows the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and</li> <li>b) a report showing compliance with the Mobile Phone Base Station Code.</li> </ul>
Visual	The visual impact will be minimal. The tower will replace an existing lighting structure, and it has been designed to have minimal impact. The colour will blend with the transmitter station being coloured similarly to that of the existing infrastructure within the sporting field complex.
Decrease in Property Value of Surrounding Residential Properties	Property devaluation is not a planning consideration under the Environmental Planning & Assessment Act. This assessment can only consider those factors which relate to this Act.
Suitability of Site	The sporting field is not considered to be a sensitive location. Sensitive locations are schools, hospitals and aged care facilities. The sporting field option provides good phone coverage and a buffer between the tower and the neighbouring residents, with the closest dwelling being approximately 80 metres away.
Flight Path Obstacle	The height of the tower is not considered to be a flight path obstacle.
Fire Risk	The facility is to be constructed in accordance with the Building Code of Australia and is built to a standard which is considered to have minimal fire risk. This also takes into account the nature of the construction materials used. Fire risk is considered to be minimal, and less than a residential dwelling.

#### ***SECTION 4.15(1)(e) THE PUBLIC INTEREST***

The proposed development would be in accordance with the Muswellbrook LEP 2009, Muswellbrook DCP and is unlikely to have any adverse environmental impacts. Accordingly, the proposed development is considered to be generally in accordance with the public interest.

## **6. CONCLUSION**

The application has been assessed in accordance with the relevant overriding legislation being State Environmental Planning Policy (Infrastructure) 2007. The application has also been placed on public exhibition for a minimum of fourteen days with 12 submissions being received.

It is recommended the application be approved subject to conditions of consent.

Signed by:

Reviewed by:

**Libby Cumming**  
**Contract Town Planner**

**Sharon Pope**  
**Assistant Director Environment &**  
**Community Services**

**Date:** 28 November 2018