

5.5. NEGOTIATED DECISION REQUEST TELECOMMUNICATIONS FACILITY 3 ESCAPE STREET

REPORT AUTHOR(S)	Jenny Elphinstone, Senior Planning Officer
GENERAL MANAGER	Nick Wellwood, General Manager Operations
DEPARTMENT	Development Assessment and Coordination
PROPOSAL	Request for a Negotiated Decision for the Material Change of Use for a Telecommunication Facility
APPLICANT	Optus Mobile Pty Ltd c/- Urbis Pty Ltd Level 7, 123 Albert St BRISBANE QLD 4000
LOCATION OF SITE	3 Escape Street, Port Douglas
PROPERTY	Lot 48 on RP747344

LOCALITY PLAN



Figure 5 - Locality Plan

LOCALITY	Port Douglas and Environs
PLANNING AREA	Community & Recreation Facilities
PLANNING SCHEME	Douglas Shire Planning Scheme 2006
REFERRAL AGENCIES	Department of Infrastructure, Local Government and Planning
NUMBER OF SUBMITTERS	Note Applicable
STATUTORY ASSESSMENT DEADLINE	Not Applicable
APPLICATION DATE	18 February 2017 22 July 2017 (Request for a Negotiated Decision)

RECOMMENDATION

That Council does not support the request to negotiate conditions to the Decision Notice issued 11 July 2017 for a material change of use for a Telecommunications Facility on land described as Lot 48 on RP747344, located at 3 Escape Street, Port Douglas.

EXECUTIVE SUMMARY

Council has approved a development permit for a material change of use for a Telecommunications Facility at 3 Escape Street, Port Douglas subject to conditions. The applicant has requested three conditions be amended or deleted regarding: aviation safety lighting; co-location of infrastructure for other carriers; and the decommissioning and removal of the facility at the expiration of the lease. The facility needs to provide a suitable standard of safety with respect to the nearby existing helicopter landing area, and this can be a low intensity standing red light at the top of the tower. Given the ever improving telecommunication technology, the need for different facilities and the need for multiple locations in the Port Douglas and Craiglie areas, it is essential that the towers are designed for co-location of carriers. It is important that when facilities become redundant and/or leases expire that the responsibility for decommissioning and removal rests with the applicant and not the land owner. The various requests are not supported.

TOWN PLANNING CONSIDERATIONS

Background

At the Ordinary Meeting held on 11 July 2017 Council approved a development permit for a material change of use for a Telecommunications Facility. The approval, issued to Optus Mobile Pty Ltd, was subject to conditions. The land on which the Facility is to be developed is Council owned park and a separate lease agreement has been negotiated with the applicant.

The applicant has requested a negotiated decision and seeks an amended set of conditions. Each condition variation is discussed separately below together with officer comment. The applicant has also suspended the applicant appeal period while the request is being considered by Council.

Condition 3a Amendment to Design

The condition reads,

3. a. Incorporate within the design aviation hazard lights being installed in accordance with the specifications of the Civil Aviation Safety Authority.

Applicant Request

“Whilst Optus is not opposed to installing aviation hazard lights atop the monopole, it is considered to be unusual in an area such as this. It is recognised that there is a helicopter landing area located approximately 1 kilometre to the north and this may have triggered the requirement. However, it is contended that installing the aviation hazard lighting may be detrimental to the visual amenity outcomes sought for the facility. With reference to Condition 6, we seek to minimise light overspill from the facility.

The approved facility has an overall height of approximately 27.5 metres and is not considered to pose a hazard to aircraft in the area. However, if Council seek to retain this condition, Optus has confirmed that they are willing to install the aviation hazard lights in accordance with the condition.”

Officer Comment

The safety for the movement of aviation in the area is of utmost importance, in particular given the adjacent residential uses. The telecommunications tower is of a height that is inconsistent with surrounding development and the safety considerations override visual amenity considerations. Discussions with CASA Cairns identified the aviation lighting may be a “low intensity standing red” which is a non-flashing red light that minimises environmental concerns for residents. The request to remove the condition is not supported.

Condition 3c Amendment to Design

The condition reads,

3. c. Incorporate into the tower design the ability to co-locate at least three other telecommunications carriers.

Applicant Request

“The Telecommunications Act 1997 establishes a regime for Carriers’ rights and responsibilities when inspecting, maintaining or installing telecommunications facilities. Schedule 3 provides authority for Carriers to inspect land, maintain facilities or install any declared ‘low impact facilities’. The Telecommunications Code of Practice 1997 repeats and builds on the obligations that are in Schedule 3. The Code of Practice imposes various obligations on Carriers, including:

- *notice requirements to the Commonwealth Environment Secretary in specified circumstances;*
- *noise limits;*
- *a requirement to consider whether infrastructure of a utility or another Carrier is available for the activity (co-location);*
- *a requirement to take all reasonable steps to use existing facilities for the activity;*
- *a requirement to cooperate and coordinate their activities with those of other Carriers and utilities; and*
- *compliance with recognised industry codes and standards.*

The Communications Alliance Industry Code – Mobile Phone Base Station Deployment is the mechanism by which carriers can collocate with other carriers and actively promotes the use of existing sites in order to mitigate the effects of facilities on the landscape. It is this framework of legislation that ensures that Carriers will continue to work together to facilitate collocation where possible.

This is also reflected in Acceptable Solution A1.1 of Council's Telecommunications Facilities Code, which provides the following:

Telecommunication Facilities are co-located with other Telecommunication Facilities.

OR

Telecommunication Facilities are located in or on an existing structure.

Therefore, it is considered that there is already clear direction for Carriers to facilitate collocation where possible, without the need for the above condition. Furthermore, it is very difficult to unequivocally accommodate multiple carriers due to the following:

- *Given that each carrier's current mobile network is different, it is highly unlikely that this facility will provide optimal coverage for all carriers.*
- *The 25 metre monopole is not tall enough to accommodate all mobile carriers given the required vertical separation between different carrier's equipment. Given the presence of mature vegetation in immediate proximity to the facility, it is unlikely that any carrier would be able to effectively operate at a height of below 20 metres. The alternative is to propose a significantly taller facility, which we do not consider to be appropriate in this area.*
- *It is unknown the extent of equipment that one or multiple other carriers may wish to accommodate on the facility. Variables such as type of antennas, number of antennas and other equipment could affect the weight and also the sail area imposed on the facility and these factors can dramatically impact the required strength and size of the monopole and its foundations.*

Typically, collocation between carriers occurs on a 'needs' basis. All carriers work together to accommodate other carriers upon approach, and in the event that an existing facility cannot

physically accommodate the new equipment, pole strengthening can be undertaken and/or a pole swap-out can be undertaken under the maintenance provisions of the Telecommunications Act 1997 and the Telecommunications (Low-Impact Facilities) Determination 1997.

Therefore, it is requested that Council remove Condition 3c in recognition that the direction for carriers to collocate is already adequately established in the framework of telecommunications legislation.”

Officer Comment

Optus advised during the course of the assessment that the tower was needed at this location to provide sufficient coverage to the Port Douglas area and the tower was part of a local network with two other towers: one at Craiglie; and the other at the town centre. Council has also received a separate application for another tower at a similar location. Concern is raised with the possible proliferation of towers in the three areas: town centre; around Escape Street; and Craiglie. Both applications seek to use public land: Council owned Park; and road for these commercial activities.

Mobile telecommunication facilities are important infrastructure to the community. The future mobile network is expected to deliver download data speeds in the 5G environment that are reportedly higher than NBN and 100 times faster than the current 4G network. Testing by Telstra and Optus for a 5G network is scoped for the Commonwealth Games. With higher speeds a mobile phone can act as a network link instead of a fixed line modem (ADSL or NBN). The applicant has advised that the proposed Facility will provide for the 4G network and will be able to be upgraded for use in the 5G network.

The condition seeks the facility to be designed to cater for co-located facilities. The condition is considered reasonable having regard to the Telecommunications Code of Practice, the use of Council park and Council's concern for amenity considerations. Given the location in a cyclone-prone area, it is important that the tower be engineered and designed at its inception to cater for other providers. Where the tower needs to be slightly increased in height to provide for additional carriers this should be incorporated into the design. A slightly higher tower is preferred to a proliferation of multiple towers. The request is not supported.

Condition 4 – Limited Approval

The condition reads,

4. The development hereby approved lapses at the expiry of agreement to lease the land from the land owner or entity from which a lease may be attained. Prior to the lapse of the life of the approval the telecommunications tower and all associated infrastructure, buildings, structures and fencing must be decommissioned and removed and the site reinstated to its original condition to the satisfaction of the Chief Executive Officer. All costs associated with the decommissioning and the final removal shall be borne by the Applicant or entity that operates the tower at the time of removal.

Applicant Request

“Optus is supportive of a condition to decommission and remove the telecommunications facility in the event that it is no longer being utilised for telecommunications infrastructure and is rendered redundant. However, this condition ties the use of the facility directly to the current lease, which may not necessarily represent the life of the facility. It is unknown what may occur with the tenure arrangement between Optus and Council in the future and the implications that this may have on the current lease or any subsequent tenure arrangements.

Furthermore, with reference to the legislative framework for colocation established in response to Condition 3c, it is possible that this facility will accommodate multiple collocating carriers in the future. In the event that Optus no longer operates from this facility, it is important to protect the ongoing rights of any collocating parties to ensure they can continue to operate at this facility.

We note that discussions were undertaken with Council Property personnel during the development application to the effect that this condition is overly onerous and not required. Notwithstanding, it is recognised that a condition to protect Council's public asset into the future would be beneficial.

We recently received a condition on a very similar approval in a different Council area. The condition referred to the Removal of a Redundant Facility as follows:

In the event that the facility is no longer needed, the facility must be removed and the site restored to a similar condition to that which existed prior to its construction. All removal works must be undertaken at the cost of the owner of the facility.

It is considered that this condition is reflective of the outcomes sought by both Council and Optus to ensure that in the event that future technology progresses to the extent that the facility is no longer required, it will be removed at Optus' expense. Optus would be amenable to a condition more reflective of the above.”

Officer Comment

Concern is raised with the lack of particulars of the proposed reworded condition. The applicant has gone to lengths to avoid entering into a lease agreement as per a reconfiguration of a lot under the *Sustainable Planning Act 2009* and to date Council officers have accepted this position. Council is the owner of the land but not the operator of the facility. The condition is currently worded to clearly direct responsibility for future decommissioning and removal to the tower operator. The condition does not stipulate the lease is to be to a particular entity as the lease may in the future be novated to another party, which may be another telecommunications carrier. The condition is considered reasonable.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

Regulator: Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009*, Council is the assessment manager for the application.