



Development Services Attachments
ORDINARY MEETING OF COUNCIL
Wednesday 17 October 2018

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Waste Avoidance and Resource Recovery Act 2007
Local Government Act 1995

SHIRE OF CHITTERING

WASTE LOCAL LAW 2018

WASTE AVOIDANCE AND RESOURCE RECOVERY ACT 2007**LOCAL GOVERNMENT ACT 1995****WASTE LOCAL LAW 2018****CONTENTS****PART 1 – PRELIMINARY**

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Waste Avoidance and Resource Recovery Act 2007
Local Government Act 1995

Shire of Chittering

WASTE LOCAL LAW 2018

Under the powers conferred on it by the *Waste Avoidance and Resource Recovery Act 2007* and the *Local Government Act 1995* and under all other enabling powers, the Council of the Shire of Chittering resolved on 17 October 2018 to make the following local law.

PART 1 – PRELIMINARY

1.1 Short title

This is the *Shire of Chittering Waste Local Law 2018*.

1.2 Commencement

This local law commences 14 days after the day on which it is published in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

This local law repeals Part 4 Division 2 of the *Shire of Chittering Health Local Laws 1998*, as published in the *Government Gazette* on 29 June 1998.

1.5 Meaning of terms used in this local law

(1) In this local law—

authorised person means a person appointed by the local government under section 9.10 of the *LG Act* to perform any of the functions of an authorised person under this local law;

collectable waste means local government waste that is not—

- (a) liquid refuse;
- (b) liquid waste; or
- (c) non-collectable waste;

collection, when used in relation to a receptacle, means the collection and removal of collectable waste from the receptacle by the local government or its contractor;

collection day means the day determined by the local government for the collection of collectable waste in the district or a part of the district;

collection time means the time on the collection day determined by the local government for the collection of collectable waste in the district or a part of the district;

commercial purpose means an activity conducted for the purpose of generating income or making a profit from the re-sale of waste materials;

costs of the local government include administrative costs;

district means the district of the local government;

general waste receptacle means a receptacle for the deposit and collection of collectable waste that is not recycling waste;

LG Act means the *Local Government Act 1995*;

LG Regulations means the *Local Government (Functions and General) Regulations 1996*;

local government means the Shire of Chittering;

local government waste has the same meaning as in the *WARR Act*;

non-collectable waste has the meaning set out in Schedule 1;

occupier in relation to premises, means any or all of the following—

- (a) a person by whom or on whose behalf the premises are actually occupied; or
- (b) a person having the management or control of the premises;

organic waste means waste that decomposes readily, such as garden waste or food waste;

organic waste receptacle means a receptacle for the deposit and collection of organic waste;

owner has the same meaning as in the *LG Act*;

public place includes a place to which the public ordinarily have access, whether or not by payment of a fee;

receptacle means a receptacle—

- (a) that has been supplied for the use of the premises by the local government or its contractor, or which has otherwise been approved by the local government; and
- (b) the waste from which is collected and removed from the premises by the local government or its contractor;

recycling waste receptacle means a receptacle for the deposit and collection of recycling waste;

recycling waste means—

- (a) paper and cardboard;
- (b) plastic containers comprised of polyethylene terephthalate or high density polyethylene;
- (c) glass containers;
- (d) steel containers;
- (e) aluminium containers;
- (f) liquid paper board; and
- (g) any other waste determined by the local government to be recycling waste;

Schedule means a schedule appended to this local law;

specified means specified by the local government or an authorised person, as the case may be;

street alignment means the boundary between the land comprising a street and the land that abuts the street;

WARR Act means the *Waste Avoidance and Resource Recovery Act 2007*;

waste has the same meaning as in the *WARR Act*;

waste facility means a waste facility, as defined in the *WARR Act*, that is operated by the local government; and

waste service has the same meaning as in the *WARR Act*.

- (2) Where, in this local law, a duty or liability is imposed on an owner or occupier, or on an owner and occupier, the duty or liability is taken to be imposed jointly and severally on each of the owners or occupiers.

1.6 Local public notice of determinations

Where, under this local law, the local government has a power to determine a matter—

- (a) local public notice, under section 1.7 of the *LG Act*, must be given of the matter determined;
- (b) the determination becomes effective only after local public notice has been given;
- (c) the determination remains in force for the period of one year after the date that local public notice has been given under clause (a);
- (d) after the period referred to in clause (c), the determination continues in force only if, and for so long as, it is the subject of local public notice, given annually, under section 1.7 of the *LG Act*; and
- (e) the determination must be recorded in a publicly accessible register of determinations that must be maintained by the local government.

1.7 Rates, fees and charges

The local government's powers to impose rates, fees and charges in relation to waste services are set out in sections 66 to 68 of the *WARR Act* and sections 6.16 and 6.17 of the *LG Act*.

1.8 Power to provide waste services

The local government's power to provide, or enter into a contract for the provision of, waste services is dealt with in section 50 of the *WARR Act*.

PART 2 – LOCAL GOVERNMENT WASTE**2.1 Supply of receptacles**

- (1) The local government is to supply, for the use of each premises that are, or are capable of being, occupied or used for residential purposes, one or more receptacles for the collection and removal, from those premises, of collectable waste.
- (2) The owner of premises to which subclause (1) applies must—
 - (a) ensure that the fee or charge (if any) imposed by the local government in relation to each receptacle is paid to the local government; and
 - (b) ensure that each receptacle is used, in respect of those premises, in accordance with this local law.

2.2 Deposit of waste in receptacles

- (1) An owner or occupier of premises must not deposit or permit to be deposited in a receptacle any non-collectable waste.
- (2) A person must not deposit waste in a receptacle that has been provided for the use of other premises without the consent of the owner or occupier of those premises.

2.3 General waste receptacles

- (1) An owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle—
 - (a) where the receptacle has a capacity of 240 litres—more than 70 kilograms of collectable waste; or
 - (b) where the receptacle has any other capacity—more than the weight determined by the local government.
- (2) Where the local government supplies recycling waste receptacles, an owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle any recycling waste.
- (3) Where the local government supplies organic waste receptacles, an owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle any organic waste.

2.4 Recycling waste receptacles

An owner or occupier of premises must not deposit or permit to be deposited in a recycling waste receptacle—

- (a) anything other than the particular type of recycling waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 240 litres— more than 70 kilograms of recycling waste; or
- (c) where the receptacle has any other capacity—more than the weight determined by the local government.

2.5 Organic waste receptacles

An owner or occupier of premises must not deposit or permit to be deposited in an organic waste receptacle—

- (a) anything other than the particular type of organic waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 240 litres - more than 70 kilograms of organic waste; or
- (c) where the receptacle has any other capacity - more than the weight determined by the local government.

2.6 Direction to place or remove a receptacle

- (1) The local government or an authorised person may give a written direction to an owner or occupier of specified premises —
 - (a) to place a receptacle in respect of those premises for collection; or
 - (b) to remove a receptacle in respect of those premises after collection.
- (2) The direction under subclause (1) may specify when the placement or removal is to occur, or where the receptacle is to be placed, or both.
- (3) An owner or occupier of premises must comply with a direction given under this clause.

2.7 Duties of owner or occupier

An owner or occupier of premises must—

- (a) except for a reasonable period before and after collection time, keep each receptacle in a storage space or area that is behind the street alignment;
- (b) take reasonable steps, if placing a receptacle for collection on the verge adjoining the premises, or other area as determined by the local government, to ensure that, within a reasonable period before collection time, each receptacle is—
 - (i) within 1 metre of the carriageway;
 - (ii) placed so that it does not unduly obstruct any footpath, cycle way, right-of-way or carriageway; and
 - (iii) facing squarely to the edge of and opening towards the carriageway, or in such other position as is approved in writing by the local government or an authorised person;
- (c) take reasonable steps to ensure that the premises are provided with a sufficient number of receptacles; and
- (d) if the receptacle is lost, stolen, damaged or defective, notify the local government, as soon as practicable, after the event.

2.8 Exemption

- (1) An owner or occupier of premises may apply in writing to the local government for an exemption from compliance with the requirements of clause 2.7(a) or (b).
- (2) The local government or an authorised person may grant, with or without conditions, or refuse an application for exemption from compliance under this clause.
- (3) An exemption granted under this clause must state—
 - (a) the premises to which the exemption applies;
 - (b) the period during which the exemption applies; and
 - (c) any conditions imposed by the local government or the authorised person.
- (4) An exemption granted under this clause ceases to apply—
 - (a) if the local government decides, on reasonable grounds, that there has been a failure to comply with a condition of the exemption; and
 - (b) from the date that the local government informs the owner or occupier of its decision under clause 2.8 (4)(a).

2.9 Damaging or removing receptacles

A person, other than the local government or its contractor, must not—

- (a) damage, destroy or interfere with a receptacle; or
- (b) except as permitted by this local law or as authorised by the local government or an authorised person, remove a receptacle from any premises to which it was delivered by the local government or its contractor.

2.10 Verge collections

- (1) Where the local government has advertised a verge waste collection (such as a green waste, or a bulk waste, verge collection) a person, unless with and in accordance with the approval of the local government or an authorised person—
 - (a) must deposit waste only during the period of time, and in accordance with other terms and conditions, as advertised by the local government in relation to that verge waste collection; and
 - (b) must otherwise comply with those terms and conditions.
- (2) Where waste has been deposited on a verge for a verge waste collection, a person must not remove any of that waste for a commercial purpose but may remove it for any other purpose.
- (3) Except where waste is lawfully removed from a verge under this clause, a person must not disassemble or tamper with any waste deposited on a verge for a verge waste collection so as to increase the risk of harm to any person.
- (4) Clause 2.10 (2) does not apply to the local government or a person engaged or contracted by the local government in relation to the verge waste collection.

PART 3 – GENERAL DUTIES

3.1 Duties of an owner or occupier

An owner or occupier of premises must—

- (a) take reasonable steps to ensure that a sufficient number of receptacles are provided to contain all waste which accumulates or may accumulate in or from the premises;
- (b) ensure that each receptacle is kept in good condition and repair;
- (c) take all reasonable steps to—
 - (i) prevent fly breeding and keep each receptacle free of flies, maggots, cockroaches, rodents and other vectors of disease;
 - (ii) prevent the emission of offensive or noxious odours from each receptacle; and
 - (iii) ensure that each receptacle does not cause a nuisance to an occupier of adjoining premises; and
- (d) whenever directed to do so by the local government or an authorised person, thoroughly clean, disinfect, deodorise and apply a residual insecticide to each receptacle.

3.2 Removal of waste from premises

- (1) A person must not remove any waste from premises unless that person is—
 - (a) the owner or occupier of the premises;
 - (b) authorised to do so by the owner or occupier of the premises; or
 - (c) authorised in writing to do so by the local government or an authorised person.
- (2) A person must not remove any waste from a receptacle without the approval of—
 - (a) the local government or an authorised person; or
 - (b) the owner or occupier of the premises at which the receptacle is ordinarily kept.

3.3 Receptacles and containers for public use

A person must not, without the approval of the local government or an authorised person—

- (a) deposit household, commercial or other waste from any premises on or into; or
- (b) remove any waste from,
a receptacle provided for the use of the general public in a public place.

PART 4 – OPERATION OF WASTE FACILITIES

4.1 Operation of this Part

This Part applies to a person who enters a waste facility.

4.2 Hours of operation

The local government may from time to time determine the hours of operation of a waste facility.

4.3 Signs and directions

- (1) The local government or an authorised person may regulate the use of a waste facility—
 - (a) by means of a sign; or
 - (b) by giving a direction to a person within a waste facility.
- (2) A person within a waste facility must comply with a sign or direction under subclause (1).
- (3) The local government or an authorised person may direct a person who commits, or is reasonably suspected by the local government or the authorised person of having committed, an offence under this clause to leave the waste facility immediately.
- (4) A person must comply with a direction under subclause (3).

4.4 Fees and charges

- (1) Unless subclause (3) applies, a person must, on or before entering a waste facility or on demand by the local government or an authorised person, pay the fee or charge as assessed by an authorised person.
- (2) An authorised person may assess the fee or charge in respect of a particular load of waste at a rate that applies to any part of that load, even if that rate is higher than the rate that would apply to any other part of the load.
- (3) Subclause (1) does not apply—
 - (a) to a person who disposes of waste in accordance with the terms of—
 - (i) a credit arrangement with the local government; or
 - (ii) any other arrangement with the local government to pay the fee or charge at a different time or in a different manner; and
 - (b) to the deposit of waste owned by the local government, or in the possession of an employee on behalf of the local government.

4.5 Depositing waste

- (1) A person must not deposit waste at a waste facility other than—
 - (a) at a location determined by a sign and in accordance with the sign; and
 - (b) in accordance with the direction of an authorised person.
- (2) The local government may determine the classification of any waste that may be deposited at a waste facility.

4.6 Prohibited activities

- (1) Unless authorised by the local government, a person must not—
 - (a) remove any waste or any other thing from a waste facility;
 - (b) deposit at a waste facility that is a landfill site any waste that is toxic, poisonous or hazardous, or the depositing of which is regulated or prohibited by any written law;
 - (c) light a fire in a waste facility;
 - (d) remove, damage or otherwise interfere with any flora in a waste facility;
 - (e) remove, injure or otherwise interfere with any fauna in a waste facility; or
 - (f) damage, deface or destroy any building, equipment, plant or property within a waste facility.

- (2) A person must not act in an abusive or threatening manner towards any person using, or engaged in the management or operation of, a waste facility.

PART 5 – ENFORCEMENT

5.1 Objection and appeal rights

Division 1 of Part 9 of the *LG Act* applies to a decision under this local law to grant, renew, vary or cancel –

- (a) an approval under clause 2.7(b);
- (b) an exemption under clause 2.8(2);
- (c) an approval under clause 2.9(b);
- (d) an approval under clause 2.10(1);
- (e) an authorisation under clause 3.2(1)(c);
- (f) an approval under clause 3.2(2); and
- (g) an approval under clause 3.3.

5.2 Offences and general penalty

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law a person is prohibited from doing, commits an offence.
- (2) A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to a further penalty not exceeding \$500 in respect of each day or part of a day during which the offence has continued.

5.3 Other costs and expenses

- (1) A person who is convicted of an offence under this local law is to be liable, in addition to any penalty imposed under clause 5.2, to pay to the local government the costs and expenses incurred by the local government in taking remedial action such as—
 - (a) removing and lawfully disposing of toxic, hazardous or poisonous waste; or
 - (b) making good any damage caused to a waste facility.
- (2) The costs and expenses incurred by the local government are to be recoverable, as a debt due to the local government, in a court of competent civil jurisdiction.

5.4 Prescribed offences

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the *LG Act*.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 2.

5.5 Form of notices

- (1) Where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the *LG Act* is that of Form 1 in Schedule 1 of the *LG Regulations*.

- (2) The form of the infringement notice given under section 9.16 of the *LG Act* is that of Form 2 in Schedule 1 of the *LG Regulations*.
- (3) The form of the infringement withdrawal notice given under section 9.20 of the *LG Act* is that of Form 3 in Schedule 1 of the *LG Regulations*.

SCHEDULE 1 – Meaning of ‘Non-Collectable Waste’

[clause 1.5]

non-collectable waste means—

- (a) hot or burning material;
- (b) household hazardous waste, including paint, acids, alkalis, fire extinguishers, solvents, pesticides, oils, gas cylinders, batteries, chemicals and heavy metals;
- (c) any other hazardous material, such as radioactive waste;
- (d) any explosive material, such as flares or ammunition;
- (e) electrical and electronic equipment;
- (f) hospital, medical, veterinary, laboratory or pathological substances;
- (g) construction or demolition waste;
- (h) sewage;
- (i) ‘controlled waste’ for the purposes of the *Environmental Protection (Controlled Waste) Regulations 2004*;
- (j) any object that is greater in length, width, or breadth than the corresponding dimension of the receptacle or that will not allow the lid of the receptacle to be tightly closed;
- (k) waste that is or is likely to become offensive or a nuisance, or give off an offensive or noxious odour, or to attract flies or cause fly breeding unless it is first wrapped in non-absorbent or impervious material or placed in a sealed impervious and leak-proof container; and
- (l) any other waste determined by the local government to be non-collectable waste.

SCHEDULE 2 – Prescribed Offences

[clause 5.4]

| Item No. | Clause No. | Description | Modified Penalty |
|----------|------------|---|------------------|
| 1 | 2.1(2)(a) | Failing to pay fee or charge | \$350 |
| 2 | 2.1(2)(b) | Failing to ensure lawful use of receptacle | \$350 |
| 3 | 2.2(1) | Depositing non-collectable waste in a receptacle | \$350 |
| 4 | 2.2(2) | Depositing waste in another receptacle without consent | \$350 |
| 5 | 2.3(1) | Exceeding weight capacity of a general waste receptacle | \$350 |

| Item No. | Clause No. | Description | Modified Penalty |
|----------|----------------|--|------------------|
| 6 | 2.3(2) and (3) | Depositing unauthorised waste in a general waste receptacle | \$350 |
| 7 | 2.4(a) | Depositing unauthorised waste in a recycling waste receptacle | \$350 |
| 8 | 2.4(b) and (c) | Exceeding weight capacity of a recycling waste receptacle | \$250 |
| 9 | 2.5(a) | Depositing unauthorised waste in an organic waste receptacle | \$350 |
| 10 | 2.5(b) and (c) | Exceeding weight capacity of an organic waste receptacle | \$350 |
| 11 | 2.6(3) | Failing to comply with a direction concerning placement or removal of a receptacle | \$250 |
| 12 | 2.7(a) | Failing to keep a receptacle in the required location | \$250 |
| 13 | 2.7(b) | Failing to place a receptacle for collection in a lawful position | \$250 |
| 14 | 2.7(c) | Failing to provide a sufficient number of receptacles | \$250 |
| 15 | 2.7(d) | Failing to notify of a lost, stolen, damaged or defective receptacle | \$50 |
| 16 | 2.9(a) | Damaging, destroying or interfering with a receptacle | \$400 |
| 17 | 2.9(b) | Removing a receptacle from premises | \$400 |
| 18 | 2.10(1) | Failing to comply with a term or condition of verge waste collection | \$400 |
| 19 | 2.10(2) | Removing waste for commercial purposes | \$350 |
| 20 | 2.10(3) | Disassembling or tampering with waste deposited for collection | \$250 |
| 21 | 3.1(a) | Failing to provide a sufficient number of receptacles | \$250 |
| 22 | 3.1(b) | Failing to keep a receptacle in good condition and repair | \$250 |
| 23 | 3.1(c)(i) | Failing to prevent fly breeding and vectors of disease in a receptacle | \$350 |
| 24 | 3.1(c)(ii) | Failing to prevent the emission of offensive odours from a receptacle | \$350 |
| 25 | 3.1(c)(iii) | Allowing a receptacle to cause a nuisance | \$350 |
| 26 | 3.1(d) | Failing to comply with a direction to clean, disinfect or deodorise receptacle | \$300 |
| 27 | 3.2(1) | Unauthorised removal of waste from premises | \$250 |
| 28 | 3.2(2) | Removing waste from a receptacle without approval | \$250 |
| 29 | 3.3(a) | Depositing household, commercial or other waste from any premises on or into a receptacle provided for the use of the general public in a public place | \$250 |

| Item No. | Clause No. | Description | Modified Penalty |
|----------|------------|---|------------------|
| 30 | 3.3(b) | Removing any waste from a receptacle provided for the use of the general public in a public place | \$250 |
| 31 | 4.3(2) | Failing to comply with a sign or direction | \$500 |
| 32 | 4.3(4) | Failing to comply with a direction to leave | \$500 |
| 33 | 4.4(1) | Disposing waste without payment of fee or charge | \$500 |
| 34 | 4.5(1) | Depositing waste contrary to sign or direction | \$500 |
| 35 | 4.6(1)(a) | Removing waste without authority in a waste facility | \$250 |
| 36 | 4.6(1)(b) | Depositing toxic, poisonous or hazardous waste at a waste facility | \$500 |
| 37 | 4.6(1)(c) | Lighting a fire in a waste facility | \$300 |
| 38 | 4.6(1)(d) | Removing or interfering with any flora in a waste facility | \$300 |
| 39 | 4.6(1)(e) | Interfering with any fauna without approval in a waste facility | \$300 |
| 40 | 4.6(1)(f) | Damaging, defacing or destroying any building, equipment, plant or property within a waste facility | \$500 |
| 41 | 4.6(2) | Acting in an abusive or threatening manner | \$300 |

Dated:

The Common Seal of the
Shire of Chittering
was affixed by authority of a
resolution of the Council in the
presence of:

}
}
}
}
}

Cr Gordon Houston
Shire President


Alan Sheridan
Chief Executive Officer

Consented to:



Chief Executive Officer
Department of Water and Environmental Regulation
Dated this 27th of July 2018



Government of Western Australia
Department of Water and Environmental Regulation

Your ref: 01897232, 19/04/1
Our ref: DWERDG556/18
Enquiries: Leanne Reid, 6364 7028

Mr Alan Sheridan
Chief Executive Officer
Shire of Chittering
PO Box 70
BINDOON WA 6502

chatter@chittering.wa.gov.au

SHIRE OF CHITTERING
RECEIVED

02 AUG 2018

Officer.....*Perth*.....
File.....*19/04/1*.....
Ref.....*(01897232) 1898136*.....

Dear Mr Sheridan

SHIRE OF CHITTERING WASTE LOCAL LAW 2018

I refer to the letter dated 5 July 2018 requesting my consent to the Shire of Chittering proposed Waste Local Law 2018.

I confirm that I consent to the Shire of Chittering Waste Amendment Local Law 2018 and accordingly have signed and enclosed two copies of the Local Law.

My decision to provide consent to the making of the Local Law is based on policy considerations and the responsibility for ensuring that the Local Law is within power rests with the Local Government.

I request that you provide the Minister for Environment, the Minister for Local Government and me with a copy of the Waste Local Law as gazetted.

Yours sincerely



Mike Rowe
DIRECTOR GENERAL

27 July 2018

To whom it may concern,

I wish to apply for a Home business application located at 51 Hereford Way, Lower Chittering WA 6084 for the purpose of a Dog Grooming Business.

I will be a sole owner and operator of the business. As the business will be a small operation, this will not adversely affect the amenity of the neighbourhood or cause any injury.

The proposed area of the business will be 10m long x 3m wide (this is half the width of the existing shed already in place on the above property).

The business will not be retailing any products used and does not involve provisions for refueling or repair and maintenance of motor vehicles.

There is an area of 18-20m already available for parking and lays 120m from the front gate, so no vehicles will be required to park on the main road & vehicles entering the premises for the business should not be more than that of a family vehicle.

Vehicle movement will be to a maximum of 2-3 per day Tuesday – Sunday, this would also help keep down the noise.

Essential services already exist on the property and will not be greater than the capacity already required in the zone and a sign will be displayed to not more than 1.0m².

Please find additional paperwork as required for this application.



Regards
Sabrina Syred



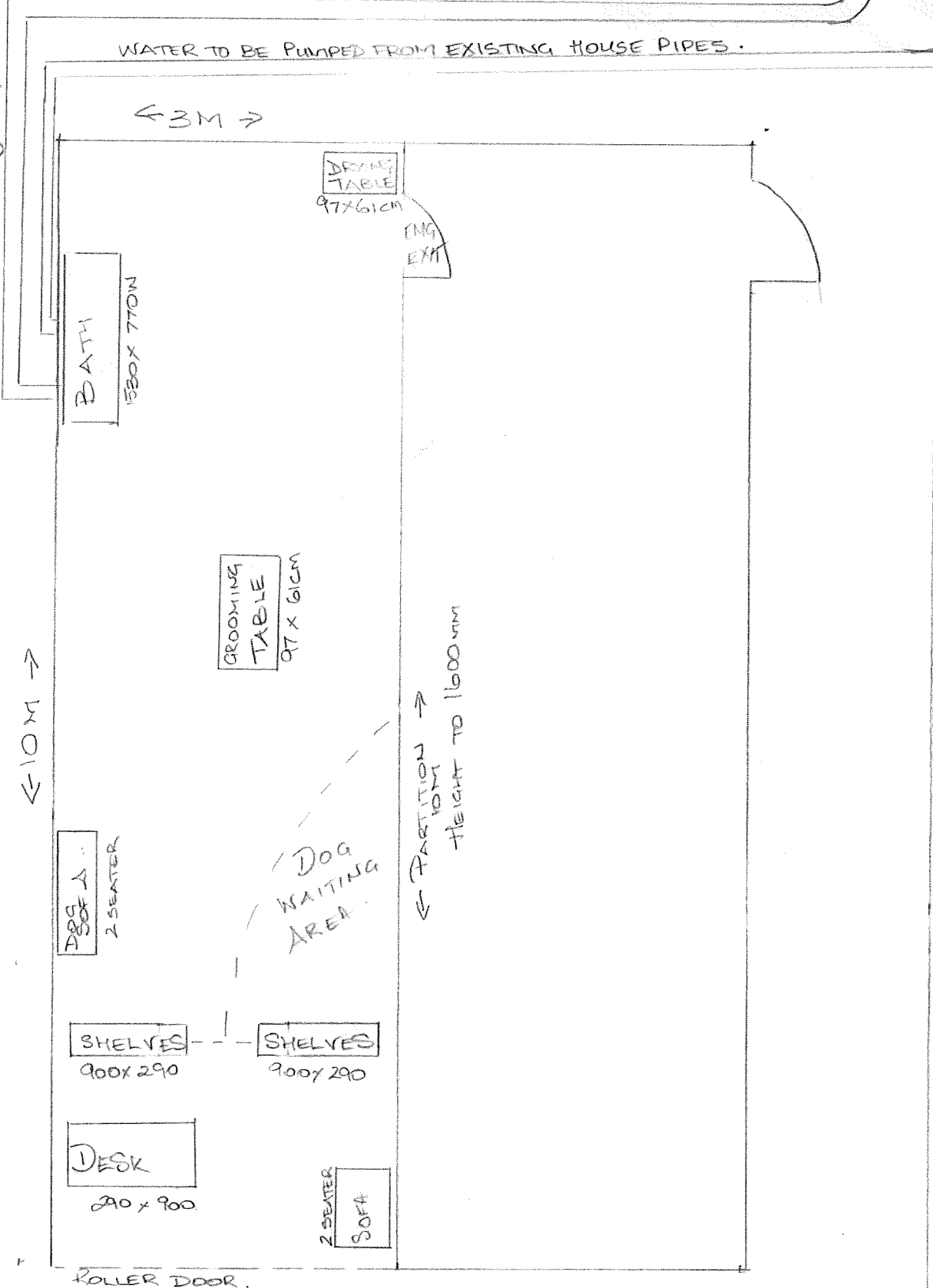
Parking Area

Shed to be used

LIGHTS & POWER
POINTS ALREADY
EXIST/NO FURTHER
LIGHTS OR POWER
WILL BE REQUIRED

WASTE WATER TO BE PUMPED TO EXISTING SEWERAGE TANK.

WATER TO BE PUMPED FROM EXISTING HOUSE PIPES.



HOUSE

GRAVEL PARKING AREA

EXISTING BUSH FRONTAGE

SCHEDULE OF SUBMISSIONS – A4070 | P056/18 | PROPOSED HOME BUSINESS (PET GROOMING); 51 HEREFORD WAY, LOWER CHITTERING

| PUBLIC SUBMISSIONS | | | |
|--------------------|--|---|---|
| Submitter | Comment | Proponent Response | Shire Officer Response |
| OPPOSE 1 | 1:The proposed shed,(garage), will it be sound proof,as I understand that it is only Colour bond,and are only thin tin sheets,not good enough for dogs in cages barking,it's enough with the 4 they already have. | To clarify this is a dog grooming business, not a kennel/minding service and as such there will be no cages or dogs kept on the property that do not belong to the family. Dogs will bark from time to time - it is a natural reaction, however the impact should be minimised by the shed structure and significant distance which will attenuate the noise getting to this neighbour. Note: There are two family dogs who live on the property, plus the two children have a dog each that come and visit or stay a weekend. | The proposal is not for the caging of dogs for prolonged periods of time. It is expected that customer dogs will be attended to for the majority of the time minimising the likelihood of any dog barking. The barking of dogs that are owned by the applicant is a separate issue that can be addressed under the <i>Dog Act 1976</i> . |
| | 2: There is no opening times only Tuesday to Sunday,are we gunna have this 24 hours,surely there should be times give. | Opening times will be from 9am - 5pm as previously noted to minimise disturbance to other residents. | If approved, Council can impose a condition that restrict operating hours as proposed by the applicant. |
| | 3:Are we going to have assurance that they won't escape on to other properties. | This is intended to be a small operation, and the dogs to be groomed will be located inside the shed and will not be roaming the property. In the unlikely event a dog gets out of the building they will be contained by the property fences. A significant amount of work has been completed to upgrade the property fences to ensure their integrity. | Shire officers have inspected the property and are satisfied that in the event a dog should escape the hands of the business operator, the perimeter fencing (ringlock) is sufficient to contain the dog to the property. |
| | 4: What assurance are we getting to say there will be no more than 2/3 cars a day,and what will be done if there are more than that number. | The traffic increase for this small business will be minimal, only comprising of dog owners dropping off/collecting their pets. As they will not be parking on the access, and will only be present for short periods there will be little impact on other surrounding residents. Regarding the specific neighbour concern, no traffic related to this activity will be passing their address as they are located on the opposite side of the property. | If approved, Council can impose a condition that restricts the business to host no more than 3 customer dogs per day. |
| | 5: We moved out here to the countryside for peace and quiet,all that seems to be happening at the moment is getting to be an industrial site. If people want to operate and build a business they should move to Wanneroo or Wangara. This is a residential area and should stay that way. | It is unfortunate that the other resident believes this small business may negatively impact on their quality of life, however we have implemented changes to minimise the risk of this occurring and hope we can continue an open dialogue to understand their concerns. | A Home Business is a land use that can be considered for approval on a 'Rural Residential' zoned lot under the Shire of Chittering Local Planning Scheme No. 6. |

*Note: Comments are as per original submission received by the Shire. Submission comments have not been edited unless for the purposes of confidentiality where necessary.

9. REPORTS

9.1 DEVELOPMENT SERVICES

9.1.1 Proposed Extension to term of Development Approval (40m high nbn™ and Telstra monopole): Lot 12383 Forrest Hills Parade, Bindoon (Bell Hill Reserve - 44213)*

| | |
|-------------------------------|---|
| Report date | 20 June 2018 |
| Applicant | Aurecon Pty Ltd on behalf of NBN Co. |
| File ref | A10088 |
| Prepared by | Senior Planning Officer |
| Supervised by | Executive Manager Development Services |
| Disclosure of interest | Nil |
| Voting requirements | Simple Majority |
| Attachments | <ol style="list-style-type: none"> 1. Minutes of item 9.1.1 of May 2016 2. Applicant's request for time extension 3. Schedule of Submissions 4. Late submission from the Department of Planning, Lands and Heritage (received 12 June 2018) |

Executive Summary

Council's consideration is requested for an application to extend the period within which development of a 40m high telecommunications monopole may commence on Lot 12383 Forrest Hills Parade, Bindoon, also known as "Bell Hill Reserve". The infrastructure was previously approved by Council in 2016 subject to a requirement that development shall commence within two years. Development has not yet commenced and as such, an application to extend the two year frame has been submitted to Council for consideration. This report and subsequent determination of Council, is simply for an extension of the time period within which development is to commence.

IMAGE 1: Location Plan



Background

At its Ordinary Meeting held 18 May 2016, Council considered an application for Development Approval for a 40m high telecommunication monopole and associated infrastructure on Lot 12383 Forrest Hills Parade, Bindoon (Bell Hill Reserve - 44213). Council subsequently resolved the following:

9.1.1 SUBSTANTIVE MOTION / COUNCIL RESOLUTION 020516

Moved Cr Tilbury / Seconded Cr Rossouw

1. That Council grant planning approval for the proposed Telecommunications Facility/NBN Fixed Wireless Facility at Lot 12383 (Bell Hill Reserve No. 44213) Forrest Hills Parade, Bindoon subject to the following:
 - a. All development to be in accordance with the approved plans.
 - b. Screening and landscaping of the area is to be implemented by the applicant within a period of 3 months of finalizing of the Fixed Wireless Facility.
 - c. The Landscape Management Plan is to be submitted and approved by the Chief Executive Officer. The Landscape Management Plan is to address:
 - i. Screening planting;
 - ii. Upgrading of firebreaks;
 - iii. Control of weeds;
 - iv. Removal of dead trees.
 - d. The applicant is required to plant 50 trees to compensate for the loss of six trees as a result of the construction of the 118m² compound to house the tower and these are to be maintained for two summers from the date of planting. Timing of planting and species to be at the discretion of Chittering Landcare.
 - e. If trees which are required to be removed are deemed as habitat for any endangered species at present or in the future upon maturation, the applicant is to fund to the installation of roosting boxes to compensate for the potential loss of habitat.
 - f. Any soils deposited or disturbed on-site shall be stabilized to the approval of the Chief Executive Officer.
 - g. Stormwater generated from the development of the compound and access track shall be managed to the satisfaction of the Chief Executive Officer.
 - h. The proponent undertake all works in accordance with the Aboriginal Heritage Act 1972 with respect to disturbing Aboriginal Heritage Sites under section 5 of the Act.
2. After the issuing of Planning approval, the Shire of Chittering is to apply to the Department of Lands to:
 - a. excise a portion (118m² compound and separate access easement) of Bell Hill Reserve; and
 - b. re-reserve it for the purpose of 'Telecommunications Infrastructure' with the power to lease.
3. Following the excision of the land for the purpose of 'Telecommunications Infrastructure' that the applicant:
 - a. enters into a lease agreement with the Shire for the portion of the reserve for the purpose of Telecommunications Infrastructure.
 - b. the Lease Agreement is to be prepared by the applicants Solicitors and all costs associated with the preparation of the lease agreement will be borne by the applicant to the satisfaction of the Shire.
4. Any revenue as a result of the lease is to be placed into the Public Open Space Reserve.

5. *That the Shire President and Chief Executive Officer be authorised to sign and fix the common Seal to all relevant documents relating to this approval.*

Advice Notes:

1. *Kangaroo proof protection of new trees (for revegetation and landscaping) to be installed during the planting process.*
2. *The applicant is required to obtain a clearing permit from the Department of Environmental Regulation prior to undertaking any clearing of vegetation and/or trees on the Bell Hill Reserve.*
3. *The applicant to provide rubbish bins during construction phase at an appropriate site and remove all rubbish from the site and any damage caused to be remediated upon completion of works to the Chief Executive Officers satisfaction.*
4. *The applicant is to immediately once upon construction of the tower of the tower is complete, co-locate the existing DFES pager antenna on the tower to the satisfaction of DFES.*
5. *The applicant is to register the tower with the Aviation Authority/RAAF.*
6. *A building permit shall be issued by the Shire of Chittering prior to the commencement of any work on the site.*
7. *Any noise emitted during the operation of the tower shall be in accordance with the Environmental Protection (Noise) Regulations 1997.*
8. *This approval shall expire if the development hereby approved has not been substantially commenced within a period of two years from the date hereof, or within any extension of that time (requested in writing prior to the approval expiring) that may be granted by the local government. Where planning approval has lapsed, no further development is to be carried out.*
9. *The applicant has a right of review to the State Administrative Tribunal should the applicant be aggrieved by Council's decision. Such a review should be lodged to the State Administrative Tribunal within twenty-eight (28) days of Council's decision.*
10. *The proponent is to liaise and engage with the South West Land and Sea Council regarding Aboriginal Heritage prior to any works being undertaken.*

*THE SUBSTANTIVE MOTION WAS PUT AND DECLARED CARRIED 6/1
Cr Gibson voted against the Motion*

A copy of the Council report upon which the above determination was made has been provided as an Attachment to this report (**Attachment 1**).

The two year timeframe within which development is to be 'substantially commenced' pursuant to the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations) has now expired with construction of the development yet to commence. As such, the applicant has submitted an application to extend the term of approval for a further two years. The applicant's request for the extension of time and details of the previously approved development are provided in **Attachment 2** of this report.

The applicant's justification for the request is centred around the significant delays experienced addressing the requirements of the Department of Aboriginal Affairs which stems from the requirements of the *Aboriginal Heritage Act 1972*.

The application to be determined by Council is the request for an extension of the two year timeframe within which development shall commence. No other changes are requested or proposed.

Consultation/Communication Implications

Local

Pursuant to the requirements of the Regulations, the application was advertised in the following ways:

- Letters to landowners within a 4km radius of the proposed development (consistent with advertising area for the original application);
- Advertising signs placed adjacent to Lot 44213 on Forrest Hills Parade; and
- Public notice placed in the local newspaper (Bullsbrook/Gingin Advocate).

Affected landowners were afforded 21 days to provide a response to the Shire with advertising conducted between 25 April 2018 and 16 May 2018.

As a result of the above advertising, a total of 81 public submissions were received with 49 supporting the application and 32 objecting to the application. Each submission has been tabled within the 'Schedule of Submissions' with the applicant and Shire officers providing a comment against each submission. The Schedule of Submissions has been provided in **Attachment 3** of this report. It is noted that four of the submissions received checked the 'object' box on the submission sheet however, provided comment to the contrary. These submissions were still listed and tallied as an 'objection'.

State

Pursuant to the requirements of the Regulations, the following authorities were afforded the opportunity to provide comment on the application and given 42 days to respond:

- Chittering Landcare;
- Department Planning, Lands and Heritage (Aboriginal Affairs Division);
- Department of Biodiversity, Conservation and Attractions; and
- Department of Health.

From the above agencies, and at the time of writing this report, two submissions were received with no objections being raised. These submissions received are also included within the Schedule of Submissions (**Attachment 3**).

A late submission was received from the Department of Planning, Lands and Heritage (Aboriginal Affairs) on 12 June 2018, which is included as a further attachment to this report (**Attachment 4**).

Legislative Implications

State

- *Telecommunications Act 1997*
 - *Land Administration Act 1997*
 - *Planning and Development Act 2005*
 - *Planning and Development (Local Planning Schemes) Regulations 2015*
- These legislations generally govern the siting and powers for such infrastructure to be placed on land otherwise reserved under the Crown.

The *Planning and Development Regulations 2015* provides for the matters to be considered by Council in determining the application. These are listed in more detail later in this report.

Local

- Shire of Chittering Local Planning Scheme No. 6
Local Planning Scheme No. 6 (LPS6) identifies the land as being zoned Local Scheme Reserve. Application has been previously made to the Department of Planning Lands and Heritage to excise and reclassify a portion of the reserve as “Telecommunications”. This process is separate to the application before Council. Any decision made will not affect the excision process.

Policy Implications

State

- State Planning Policy 5.2 - Telecommunications Infrastructure
State Planning Policy 5.2 - Telecommunications Infrastructure (SPP5.2) provides decision makers with guidance pertaining to the siting, location and design of telecommunications infrastructure. Although relevant to the proposed development, SPP5.2 is not required to be addressed for the subject application as it relates only to an extension to the term of approval. The provisions of SPP5.2 were previously addressed in the original Council report which resulted in the application being approved.

Local

- Shire of Chittering Local Planning Policy No. 1 - Bindoon Townsite
Shire of Chittering Local Planning Policy No. 1 - Bindoon Townsite provides guidance on assessing development proposals within each policy area identified. The assessment criteria of the Policy are already captured and covered in the original report to Council by the LPS6 provisions and SPP5.2. Furthermore, as the current application is only for an extension to the term of approval, the provisions of this policy are not considered to be relevant and are not further addressed in this report.

Financial Implications

Pursuant to the Council resolution made 18 May 2016, and if approval is granted for the extension of time, a portion of the subject reserve is proposed to be excised and re-purposed for ‘Telecommunication Infrastructure’ with a power for Council to lease. The proponent is then required to enter into a lease agreement with the Shire for an annual fee.

Further to the above and Council’s previous resolution, revenue raised from the lease agreement is to be placed into the Shire’s Public Open Space reserve account.

Strategic Implications

Local

- Strategic Community Plan 2017-2027
Focus area: Economic Growth
Objective: S4.1 - Economic growth and S4.2 - local business growth
Action: ‘Continue to advocate for improved access to the NBN and better mobile phone coverage.’

Site Inspection

A site inspection was conducted by officers following receipt of the subject application. The site inspection did not reveal any significant changes to the locational environment to that previously reported to Council in 2016.

Triple Bottom Line Assessment

Economic implications

The proposed development has the capacity to assist the growth of existing businesses and promote further businesses being established within the locality, including the Bindoon Townsite, through increased communication connectivity.

Social implications

The proposed development will increase communication connectivity (through broadband internet and increased mobile phone reception) which is a likely benefit to the community at large. Importantly the infrastructure will provide additional coverage for emergency services, should it be approved and constructed.

The built form component of the development however, may present negative impacts from a visual amenity perspective. Telecommunication infrastructure such as that proposed can also create the perception that the health of local residents will be adversely affected (electromagnetic energy), regardless of the report indicating the expected EME levels are 0.17% of the federal public exposure limit.

Public access to the portion of the reserve containing the proposed development will be restricted however, the balance of the reserve will still be accessible to the general public.

Environmental implications

The proposal indicates that a total of six trees will need to be cleared to accommodate the infrastructure. The clearing of native vegetation is required to comply with the requirements of the *Environmental Protection Act 1986* and *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* regardless of any requirements of the Shire.

Notwithstanding the above, the original Development Approval granted by Council was conditioned to require the proponent to plant 50 trees in lieu of the loss of six trees and fund the installation of roosting boxes if endangered species' habitat trees are to be removed.

Officer Comment/Details

The original application for the telecommunication infrastructure on the subject site was assessed against all relevant legislation and policies by Shire officers at the time. The application was subsequently approved by Council (May 2016) following its consideration of the reported assessment and submissions received.

Within the two year period that has passed since this Council determination, it is contended that there have not been substantial changes to the relevant legislation or policies having influence upon this proposal, which affect this proposal. As such, because all the legislative and policy matters were considered previously, they do not need to be re-addressed in this report. As already noted, the previous Council report has been provided as an attachment to this report.

This report and subsequent determination of Council, is simply for an extension of the time period within which development is to substantially commence.

Given the above, officers consider that the following are relevant to this time extension request:

- Sch. 2, Pt. 9, Cl. 77 of the Regulations - 'Amending or cancelling development approval';
- Sch. 2, Pt. 9, Cl. 67 of the Regulations - 'Matters to be considered by local government'.

Each of the above are addressed individually, as follows:

Sch. 2, Pt. 9, Cl. 77 of the Regulations - 'Amending or cancelling development approval'

In assessing the current application for an extension to the period within which development shall commence, officers consider that Sch. 2, Pt. 9, Cl. 77 (1)(a) of the Regulations is pertinent which states:

- '(1) An owner of land in respect of which development approval has been granted by the local government may make an application to the local government requesting the local government to do any or all of the following -*
- (a) to amend the approval so as to extend the period within which any development approval must be substantially commenced.'*

Further to the above, Sch. 2, Pt. 9, Cl. 77 (2) of the Regulations states:

- '(2) An application under subclause (1) -*
- (a) is to be made in accordance with the requirements in Part 8 and dealt with under this Part as if it were an application for development approval; and*
 - (b) may be made during or after the period within which the development approved must be substantially commenced.'*

The above provisions of the Regulations allow for the two year timeframe of any development approval to be considered for extension upon application, with it to be assessed as if it were a new application for Development Approval. Furthermore, Sch. 2, Pt. 9, Cl. 77 (3) of the Regulations states:

- '(3) Despite subclause (2), the local government may waive or vary a requirement in Part 8 or this Part in respect of an application if the local government is satisfied that the application relates to a minor amendment to the development approval.'*

Pursuant to the above, there is discretion that can be applied towards the advertising requirements (Part 8) for the subject application.

In order to apply a consistent approach to that taken for the original development application and to offer a level of transparency given the high level of public interest that this development has attracted, the discretionary powers to vary the advertising requirements were not exercised.

Subclause (3) above, also allows for requirements of Part 9 to be varied if the application relates to a minor amendment to the development approval. No aspect of the built form or land use is being varied as part of this application (simply a time extension) and as such, the changes are regarded as a minor amendment to the original approval. This allows the local government to vary the requirements of Part 9, which includes having due regard to the listed matters for consideration when determining an Application for Development Approval. This is further discussed below.

Sch. 2, Pt. 9, Cl. 67 of the Regulations - 'Matters to be considered by local government'

As noted previously in this report, the application at hand is for an extension of the time period within which development is to commence. The assessment of the development itself (telecommunications infrastructure) has already been undertaken for the original application and remains current, as the statutory environment (legislation and policies) surrounding this application has not substantially changed.

Sch. 2, Pt. 9, Cl. 67 of the Regulations provides the matters for consideration when assessing an application for development approval. Given the above, the following matters need to be taken into consideration when determining this time extension request:

- '(67)*
- (y) any submissions received on the application;*
 - (za) the comments or submissions received from any authority consulted under Clause 66;'*

The submissions received are contained within **Attachment 3** however; the main concerns raised through the advertising period are addressed in this report and are listed below:

- Impacts on Aboriginal heritage;
- Impacts on residents health;
- Impacts on visual amenity
- Purpose of reserve;
- Other suitable sites are available.

Each of the above are addressed individually

Aboriginal Heritage

Concerns were received regarding the potential impacts of the proposed development on a site that may have some Aboriginal heritage significance.

Although the original application and report to Council did not specifically address the potential impacts on Aboriginal heritage, the conditional approval granted by Council included the following Condition and respective Advice Note:

(h) The proponent undertake all works in accordance with the Aboriginal Heritage Act 1972 with respect to disturbing Aboriginal Heritage Sites under Section 5 of the Act.

Advice Note:

10. The proponent is to liaise and engage with the South West Land and Sea Council regarding Aboriginal Heritage prior to any works being undertaken.'

As provided in the applicant's justification for the time extension request, the delays in commencing construction of the development is due to meeting the above condition of approval and the requirements of the *Aboriginal Heritage Act 1972*.

Should Council resolve to approve the subject application, the requirements of the *Aboriginal Heritage Act 1972* will still need to be met which will suitably address any impacts the proposed development may have on the Aboriginal heritage of the site.

Health Impacts

The potential for the proposed development and the emission of electromagnetic energy (EME) to impact on the health of the nearby residents was raised on several occasions through the submissions received. The submissions referenced independent studies that have been conducted, which apparently refute claims that the levels in which EME is emitted are within safe levels.

Notwithstanding, the concerns raised surrounding the potential health impacts from the proposed telecommunications infrastructure are acknowledged. It is further acknowledged that various independent studies may provide claims that the level of EME emitted from telecommunication infrastructure such as the development proposed may have harmful effects on nearby residents.

The assessment of the subject application however, should only be conducted against legislation, policies, guidelines, standards et al that are endorsed or approved by a recognised and relevant agency or government authority. The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) provide the federal standards for maximum exposure to EME for members of the public, which are enforced upon telecommunications carriers by the Australian Communications and Media Authority (ACMA).

The calculated EME for the subject site was provided in the original application and indicated maximum exposure levels to be 0.17% of the public exposure limit established by ARPANSA. Based on this information, the proposed development is unable to be considered as having anything greater than negligible impacts on the health of nearby residents.

Visual Amenity

Visual amenity was an issue raised through the advertising period and is a common concern when infrastructure of this nature is proposed, particularly within a rural-residential environment. The development proposed includes a 40m high monopole which is expected to be visual from various places within the locality.

The issue of visual amenity was raised and specifically addressed in the original report to Council and provided the following points for consideration:

- Many of the nearby dwellings located on Forrest Hills Parade face away from Bell Hill Reserve lessening the visual impact on these residences; and
- The development is proposed atop a steep plateau of Bell Hill with a portion of screened by established trees.

The environment within which the development is proposed has not considerably changed since Council's original determination and as such, the potential visual impacts are considered to also remain the same. Based on Council's original decision after taking into consideration the visual amenity impacts, it is considered that visual amenity impacts should not be a reason for this application (extension of time) to be refused.

Purpose of Reserve

Submissions received raised the issue that Bell Hill Reserve was reserved for the purpose of public open space (public enjoyment, wildlife etc.) and the use of the land for telecommunications infrastructure is not appropriate.

Lot 12383 is a local reserve for 'Parks and Recreation' under the LPS6. Pursuant to Sch. 2, Pt. 9, Cl. 67(j) of the Regulations, development on land reserved under the Scheme should have regard to the objectives for the reserve and the additional and permitted uses identified in the Scheme. LPS6 does not contain any objectives or additional/permitted uses for local reserves within the Shire and so assessment against these cannot occur.

It is acknowledged that the proposed development does not align with this reserve purpose. However, the development itself and associated infrastructure intends to occupy an area of approximately 118m². This equates to approximately 0.0055% of the total site area of Bell Hill Reserve which is approximately 2.13ha. Given the area of land required to accommodate the proposed telecommunications infrastructure, the development is considered to be ancillary to the predominant use and purpose of the reserve and will not unduly affect the public's recreational use.

Further to the above, the original determination of Council was accompanied with the following resolutions relating to the purpose of the reserve:

2. *After the issuing of Planning approval, the Shire of Chittering is to apply to the Department of Lands to:*
 - a. *excise a portion (118m² compound and separate access easement) of Bell Hill Reserve; and*
 - b. *re-reserve it for the purpose of 'Telecommunications Infrastructure' with the power to lease.*
3. *Following the excision of the land for the purposes of 'Telecommunications Infrastructure' that the applicant:*
 - a. *enters into a lease agreement with the Shire for the portion of the reserve for the purpose of Telecommunications Infrastructure.*
 - b. *the Lease Agreement is to be prepared by the applicants Solicitors and all costs associated with the preparation of the lease agreement will be borne by the applicant to the satisfaction of the Shire.'*

If Council determines to approve the application, the above resolutions will still be valid and will need to be executed, effectively creating a new stand-alone reserve for the dedicated purpose of Telecommunications Infrastructure.

Alternate Locations

The advertising period attracted submissions suggesting that alternate sites would be more appropriate to house the infrastructure. In the original application presented to Council, a list of alternate sites was provided, accompanied with justification as to why Lot 12383 was the preferred candidate.

Although alternate sites could potentially be utilised for the development, the application that was originally determined was for telecommunications infrastructure to be developed on Lot 12383. Subsequently, the request for an extension of time to that approval needs to be determined on its merits as presented to Council. Although alternate sites may be suggested and discussed informally outside of the application process, there is a statutory requirement to determine the application at hand in its current form.

The application to be determined is a request for the period, within which development shall be substantially commenced, to be extended for the approved 40m high telecommunications monopole on Lot 12383 Forrest Hills, Parade, Bindoon.

The statutory environment within which the proposal relates has not significantly changed since the proposed development was originally approved by Council on 18 May 2016. This original approval sets a precedent for Council to have due regard when determining the application for an extension of time.

It is on this basis that the application is recommended to be permitted to extend the timeframe for substantial commencement subject to appropriate conditions which have been slightly modified to reflect contemporary standards.

9.1.1 OFFICER RECOMMENDATION / COUNCIL RESOLUTION 040618

Moved Cr Tilbury / Seconded Cr Osborn

That Council:

- 1. Approve the application to extend the period for a further two years within which development approval must be substantially commenced for a telecommunications facility (40m high monopole and associated infrastructure) on Lot 12383 Forrest Hills Parade, Bindoon.**
- 2. Issue an amended Development Approval for the proposed telecommunications facility (40m high monopole and associated infrastructure) on Lot 12383 Forrest Hills Parade, Bindoon subject to the following Conditions:**
Conditions:
 - a. All development shall be in accordance with the approved plans.**
 - b. A Landscape Management Plan shall be submitted to and approved by the Shire to the specifications of Chittering Landcare prior to the completion of construction of the proposed development. The Landscape Management Plan shall make provision for the planting of at least 50 native trees within Lot 12383 and their ongoing maintenance for a period not less than two summers and the Plan shall address the following:**
 - i. screening planting;**
 - ii. firebreak upgrades;**
 - iii. weed control;**
 - iv. removal of dead trees; and**
 - v. protection of trees from kangaroos.**

- c. The approved Landscape Management Plan shall be implemented by the proponent within three months of the proposed development being constructed to the satisfaction of the Shire.
- d. The proponent shall provide an environmental report to the Shire prepared by a suitably qualified consultant detailing the vegetation required to be removed to accommodate the proposed development and whether any vegetation being removed is likely to be habitat to any threatened and/or endangered fauna, prior to commencement of works on site. The report shall make provision for the installation of roosting/nesting boxes being provided if the vegetation to be removed is determined to be threatened and/or endangered species habitat.
- e. The measures of the environmental report shall be implemented by the proponent within three months of the completion of construction of the proposed development to the satisfaction of the Shire.
- f. Any soils deposited or land disturbed on site shall be stabilised and/or remediated to the satisfaction of the Shire to avoid erosion prior to and at all times during the construction of the proposed development.
- g. All stormwater from the proposed development and associated access track shall be suitably managed and contained on site to the satisfaction of the Shire.
- h. The proposed development site shall be made free from all rubbish/litter immediately following the completion of construction of the proposed development to the satisfaction of the Shire.
- i. The existing Department of Fire and Emergency Services telecommunications equipment on Lot 12383 shall be suitably co-located on the proposed development by the proponent to the specifications of the Department of Fire and Emergency Services to the satisfaction of the Shire prior to the use and/or operation of the proposed development.
- j. A new crossover and internal accessway shall be located and constructed to the Shire's specifications at the proponent's cost prior to commencement of construction of the proposed development.
- k. The Development Approval granted by Council on 18 May 2016 for telecommunication infrastructure on Lot 12383 Forrest Hills Parade, Bindoon is hereby invalidated by this approval.
- l. This Development Approval is valid for a period of two years commencing from the date of issue by Council.

Advice Notes:

- i. With regard to Condition 2.d. and 2.e., 'threatened and/or endangered' species are those listed as such under the Wildlife Conservation Act 1950 or the Environmental Protection and Biodiversity Conservation Act 1999.
- ii. With regard to Condition 2.g., it is acknowledged that retention of all stormwater from the access track on site may not be possible and in this instance, the proponent should contact the Shire to arrange an alternate solution which may include connection to the roadside drainage network.
- iii. The proponent is required to comply with the Aboriginal Heritage Act 1972 with respect to disturbing Aboriginal Heritage Sites. It is recommended that the proponent liaise and engage with the South West Land and Sea Council regarding Aboriginal Heritage prior to any works being undertaken on site.
- iv. The proponent is advised of the requirements for the clearing of native vegetation under the Environmental Protection Act 1986 and Environmental Protection (Clearing of Native Vegetation) Regulations 2004.
- v. Noise emitted from the proposed development is required to comply with the Environmental Protection (Noise) Regulation 1997 at all times.
- vi. The proponent is recommended to consult with the Civil Aviation Safety Authority and the Royal Australian Air Force prior to construction of the proposed development to

- ensure compliance with relevant aviation legislation.*
- vii. *With regard to Condition 2.I., the proponent is advised that this approval shall expire if the development hereby approved has not been substantially commenced within a period of two years from the date hereof, or within any extension of that time (requested in writing) that may be granted by the local government. Where Development Approval has lapsed, no further development is to be carried out.*
 - viii. *The proponent has a right of review to the State Administrative Tribunal should the proponent be aggrieved by the Council's decision. Such a review should be lodged to the State Administrative Tribunal within 28 days of Council's decision.*

3. **Following the issuance of the Development Approval referred to in Resolution 2. above, instruct the Chief Executive Officer to apply to the Department of Lands to:**
 - a. **Excise a portion (118m² compound and separate access easement) of Bell Hill Reserve; and**
 - b. **Re-reserve the 118m² excised portion of reserve for the purpose of 'Telecommunication Infrastructure' with the power for the Shire to lease to a third party.**
4. **Following the creation of the new 118m² reserve in accordance with Resolution 3. above, instruct the Chief Executive Officer to enter into a lease agreement between the Shire and the proponent for the ongoing use of the 118m² reserve with the lease agreement to be prepared by the proponent's solicitor and all costs associated with the preparation of the lease agreement to be borne by the proponent to the satisfaction of the Shire.**
5. **Instruct the Chief Executive Officer to allocate revenue generated from the lease agreement entered into in accordance with Resolution 4 above, into the Shire's Public Open Space reserve account.**
6. **Authorises the Shire President and the Chief Executive Officer to sign and affix the Shire's common seal to all relevant documents relating to the lease agreement entered into in accordance with Resolution 4. above.**

**THE RECOMMENDATION WAS PUT AND DECLARED CARRIED 6/1
CRS HOUSTON, OSBORN, KING, TILBURY, ROSS AND ANGUS VOTED IN FAVOUR
CR GIBSON VOTED AGAINST**

8:14PM



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Our Ref: 6PEZ-6TOO-5101-Bindoon
Your Ref: A10088 / P020/16

28 September 2018

Chief Executive Officer
Shire of Chittering
PO Box 70
Bindoon WA 6502

Attention: Jake Whistler

Dear Sir,

Justification to Amend Conditions (c) and (i) for a Proposed NBN Fixed Wireless (Telecommunications) Facility situated on the corner Forrest Hills Parade and Ridgetop Ramble Road, Bindoon

Further to our ongoing discussions pertaining to the progression of compliance activities and the critical path to commission the facility, Aurecon on behalf of **nbn** are seeking an amendment to the Development Approval. This formal justification should be read in conjunction with the email forwarded on 20 September. The DPLH signed application form and details for payment of the statutory fee will be submitted shortly.

The amendment will ensure the successful establishment of the rehabilitation area and mitigate plant mortality and ensure that the commissioning of **nbn** and Telstra fixed wireless and Federally-funded Blackspot mobile network communications can be delivered as soon as practical. Both these outcomes will deliver benefits to the Bindoon community and visitors to the area.

We propose the following revisions to conditions (e) and (i) respectfully:

- (c) *The approved Landscape Management Plan shall be implemented by the proponent within six (6) months of the proposed development being constructed to the satisfaction of the Shire.*
- (i) *Provision must be made on the proposed development to enable the paging equipment to be co-located on the proposed development to the specifications of the Department of Fire and Emergency Services. The existing telecommunications mast on lot 12383 shall be suitably decommissioned the satisfaction of the Shire within three (3) months of the use and/or operation of the proposed development, or as otherwise agreed in writing by the Shire.*

As previously communicated we anticipate construction to commence in January to ensure that Blackspot funding remains available to Telstra and the **nbn** meet their commitment to deliver their broadband services as scheduled. A Building Permit and the Landscape Management Plan will be lodged shortly.

The justification for extending the period to establish the landscaping from three (3) to six (6) months will enable the planting to occur during the winter planting season that commences in June and runs through to the end of July. The Muchea Tree Farm who were recommended to us by the Chittering Landcare Group to source the appropriate indigenous species have confirmed our reservations that planting outside of the winter season will likely fail. Their written advice follows:

Essentially, I don't favour the time scheduling requirement imposed on your project, it seems a waste of time and money unless plants were to be watered at least 3 x week over January/February and probably March and April too. Save a vehicle being recruited to do this, a water tank could do the job but on public land this may require additional approval. I am more inclined to recommend the planting be postponed to April/May, depending upon rainfall-with perhaps some ancillary watering until winter comes proper. Should this planting schedule be deemed necessary, regardless of season, let us provide options.

As you are aware we did investigate on-site watering options given the alternative to have a contractor attend the site would bear an unreasonable financial burden. Both the hire of water tanks delivered by a flat-bed truck or on a towable trailer was not feasible due to their limited capacities (1000 litres), the need for either a petrol generator (noise ramifications) or electricity supply for pumping, exorbitant cost and risk of theft or vandalism to the equipment.

We would submit that the proposed amendment to condition (c) will facilitate the ultimate goal of achieving an environmental net gain, reduce the potential impact on the amenity to the area from noise and vehicle movements associated as well as the visual impact of irrigation infrastructure. We additionally note that the development approval is valid until July 2020 such that the amendment will not delay the establishment of the landscaping beyond when it could otherwise be lawfully established.

The necessity to amend condition (e) has arisen from the re-issue of the development approval in response to the granting of the time extension. We understand that further conditional changes were implemented by the Shire beyond that sought to align with contemporary practice.

Condition (i) on the current approval states:

- i. *The existing Department of Fire and Emergency Services telecommunications equipment on lot 12383 shall be suitably co-located on the proposed development by the proponent to the specifications of the Department of Fire and Emergency Services to the satisfaction of the Shire prior to the use and/or operation of the proposed development.*

This condition was previously partially addressed on the original 2016 approval as an advice note that recognised the need to relocate the DFES pager equipment without holding up commissioning of the facility as follows:

4. *The applicant is to immediately once construction of the tower is complete, co-locate the existing DFES pager antenna on the tower to the satisfaction of DFES.*

Relocating the DFES equipment prior to *use and/or operation* of the facility will needlessly delay both **nbn** and Telstra services. We note that the paging equipment is operated by Vodafone Hutchison Australia (VHA) on behalf of DFES. We are unsure who owns the mast itself. Given VHA are a 'Carrier' under the *Telecommunications Act* there is a formal notification process by VHA that needs to be undertaken to facilitate the relocation of ACMA licensed equipment. **Nbn** have allocated space on their facility for the DFES equipment and will coordinate this relocation, but the relocation needs to be done by VHA as the licensed Carrier. As such, the timing of the relocation is not a matter 'the proponent' can completely control, other than the new facility needs to be built before the mast can be

decommissioned. This is due to the need to ensure a continuity of essential emergency communication (particularly during the fire season). One cannot be switched off until the other is switched on.

Furthermore, VHA has provided **nbn** an undertaking to decommission their equipment (for which we understand there is no lease) and it is in VHA's interest to relocate the paging equipment as soon as practical given a position with greater elevation has been made available and the existing mast is in an area ear-marked for VHA ground level equipment as part of a subsequent low-impact upgrade. The timing of the decommissioning of the existing mast will largely take care of itself.

Given the trivial nature of the amendments requested we would hope that the request can be treated as a procedure matter and expedited as far as practical.

Should the Shire require any further clarification or additional information, please do not hesitate to contact the undersigned on 08 6145 9405 or at joel.gajic@aurecongroup.com in the first instance to expedite the exchange of information.

Yours faithfully



Joel Gajic

Manager, Environment and Planning

Aurecon on behalf of **nbn**

From: Joel Gajic <Joel.Gajic@aurecongroup.com>
Sent: Thursday, 20 September 2018 5:05 PM
To: Jake Whistler
Subject: Bindoon facility compliance with rehabilitation reporting & decommissioning of VHA mast your ref: A10088 / P020/16
Attachments: Currency of Bell Hill Vegetation assess 200918.pdf
Follow Up Flag: Follow up
Flag Status: Completed

Good afternoon Jake

I would like to provide a further update regarding the compliance activities as things ramp up prior to lodging the Building Permit and construction commencing. We are also mindful of the Federal Blackspot funding expiring should Telstra not be operational within tight timelines, as well as nbn's commitment to provide broadband services in a timely manner. With these overarching pressures I'm sure we can collaboratively work towards expediting necessary amendments to the permit conditions to ensure successful rehabilitation of the site with a net gain outcome, and continuity of essential DFES communications during the peak fire season.

Compliance Update

Chittering Landcare have consulted with the authority of the 2016 Vegetation and Flora Assessment Bell Hill Reserve and provide the attached written confirmation of its currency. I understand that this will come through to you via your records system shortly (if not already).

We will continue to prepare the Landscaping Plan to fully detail the extent of disturbance and are awaiting Muchea Tree Farm to provide a quotation for replacement species, soil preparation materials and kangaroo protection post and fencing. We will also confirm the appropriate Yued business that can undertake the landscaping as part of nbn's committee for genuine Aboriginal engagement.

Permit Amendment

The Department of Lands signature to facilitate a formal DA amendment will be sought pending further advice we now seek.

Condition (i) on the current approval states:

- i. *The existing Department of Fire and Emergency Services telecommunications equipment on lot 12383 shall be suitably co-located on the proposed development by the proponent to the specifications of the Department of Fire and Emergency Services to the satisfaction of the Shire prior to the use and/or operation of the proposed development.*

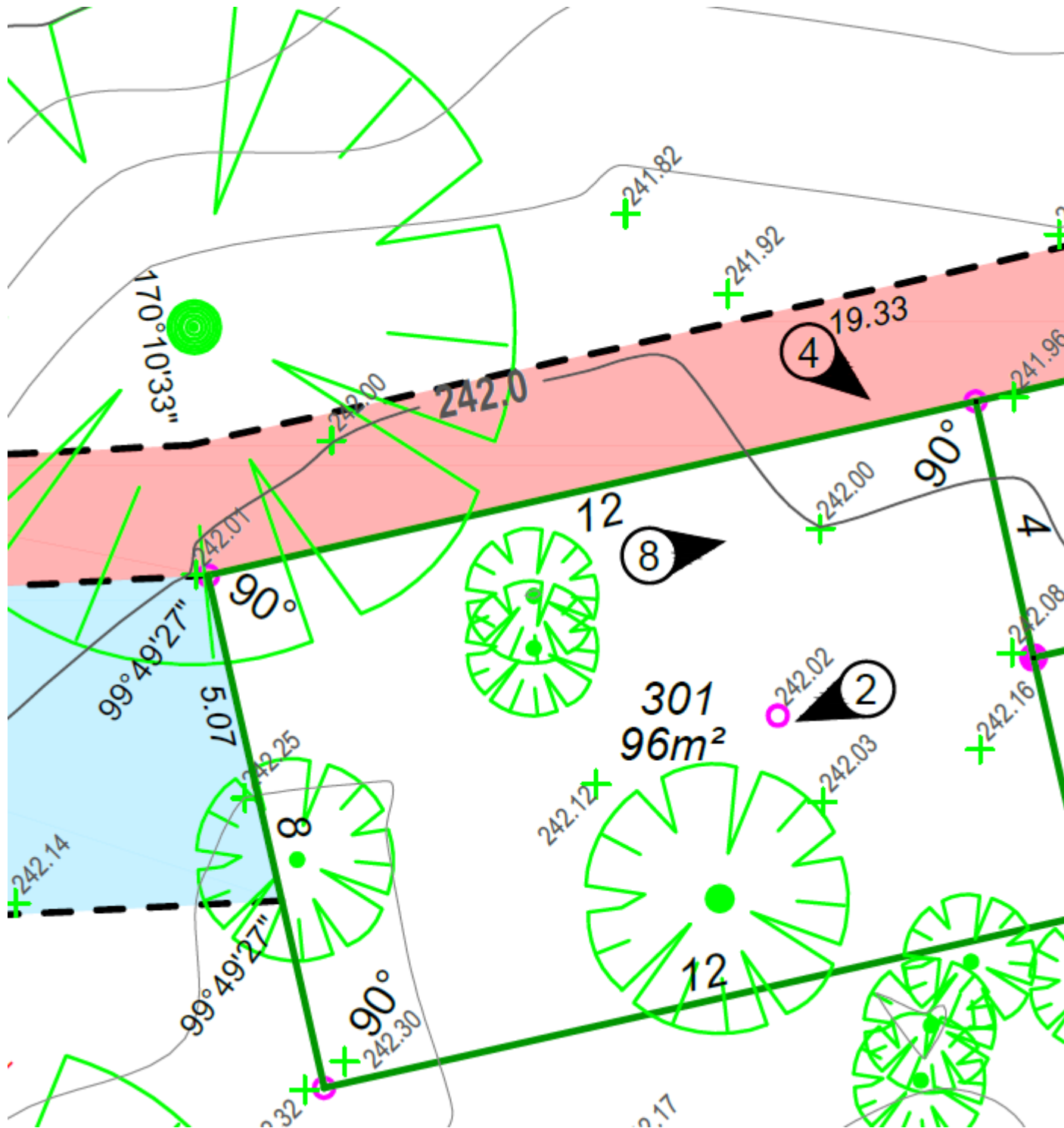
This condition was previously partially addressed as an advice note that recognised the need to relocate the DFES pager equipment without holding up commissioning of the facility as follows:

4. *The applicant is to immediately once construction of the tower is complete, co-locate the existing DFES pager antenna on the tower to the satisfaction of DFES.*

Relocating the DFES equipment prior to commissioning of the nbn facility risks delaying the commissioning of the nbn facility and operations for both nbn and Telstra.

To shed further light on the dilemma the current condition creates we note that the paging equipment is operated by Vodafone Hutchison Australia (VHA) on behalf of DFES. Given VHA are a 'Carrier' under the Telecommunications Act there is a formal notification process that needs to be undertaken to facilitate the relocation of ACMA licensed equipment. Nbn will make space available on the monopole for the equipment and coordinate this relocation with VHA, but has no power to relocate it itself. This needs to be done by VHA as the licensed Carrier. As such, the timing of the relocation is not a matter 'the proponent' can completely control other than the new facility needs to be built before the mast can be decommissioned. This is due to the need to ensure a continuity of essential emergency communication (particularly during the fire season). One cannot be switched off until the other is switched on.

Furthermore VHA has provided nbn an undertaking to decommission their equipment (for which we understand there is no lease) and it is in VHA's interest to relocate the paging equipment as soon as practical given it is in an area ear-marked for VHA ground level equipment as part of a subsequent low-impact upgrade (see draft leasing plan below). The timing of the mast decommissioning will largely take care of itself.



As such we propose the following amendment to the condition that will still ensure the paging equipment is co-located and a continuity of service can be provided, retains the Shire's ability to enforce through the Planning and Development Act the decommissioning of the existing mast, and does not place at risk the commissioning of the facility/Blackspot funding:

- i. *Provision must be made on the proposed development to enable the paging equipment to be co-located on the proposed development to the specifications of the Department of Fire and Emergency Services. The existing telecommunications mast on lot 12383 shall be suitably decommissioned the satisfaction of the Shire within three (3) months of the use and/or operation of the proposed development, or as otherwise agreed in writing by the Shire.*

Please confirm the Planning Department has no in principal objection to the amendment of condition (i) as suggested (subject to final agreed wording by the Shire) and the timing of the rehabilitation to coincide with the winter planting season.

Please also confirm that this arguably trivial amendment can be undertaken under delegated authority.

regards

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DISCLAIMER

From: Joel Gajic <Joel.Gajic@aurecongroup.com>
Sent: Thursday, 20 September 2018 3:34 PM
To: Jake Whistler
Subject: Bindoon facility compliance with rehabilitation reporting your ref: A10088 / P020/16
Attachments: Currency of Bell Hill Vegetation assess 200918.pdf
Follow Up Flag: Follow up
Flag Status: Completed

Good afternoon Jake

Chittering Landcare have consulted with the authority of the 2016 Vegetation and Flora Assessment Bell Hill Reserve and provide the attached written confirmation of its currency. I understand that this will come through to you via your records system shortly (if not already).

We will continue to prepare the Landscaping Plan to fully detail the extent of disturbance and are awaiting Muchea Tree Farm to provide a quotation for replacement species, soil preparation materials and kangaroo protection post and fencing. We will also confirm the appropriate Yued business that can undertake the landscaping as part of nbn's committee for genuine Aboriginal engagement.

The Department of Lands signature to facilitate the DA amendment will be sought pending further advice regarding amending the further condition pertaining to relocating the paging equipment that currently states:

- i. *The existing Department of Fire and Emergency Services telecommunications equipment on lot 12383 shall be suitably co-located on the proposed development by the proponent to the specifications of the Department of Fire and Emergency Services to the satisfaction of the Shire prior to the use and/or operation of the proposed development.*

The paging equipment is operated by Vodafone Hutchison Australia (VHA) on behalf of DFES. Given VHA are a 'Carrier' under the Telecommunications Act there is a formal notification process that needs to be undertaken to facilitate the relocation of ACMA licensed equipment. Nbn will make space available on the monopole for the equipment and coordinate this relocation with VHA, but has no power to relocate it itself. This needs to be done by VHA as the licensed Carrier. As such, the timing of the relocation is not a matter 'the proponent' can control. Nonetheless, VHA has provided nbn an undertaking to decommission their equipment (for which we understand there is no lease) and it is in VHA's interest to relocate the paging equipment as soon as practical. The Mast needs to be decommissioned to undertake the nbn works as it is smack bang in the middle of the new compound such that the timing of the decommissioning takes care of itself.

As such we propose the following amendment to the condition that will still ensure the paging equipment is co-located and retains the somewhat superfluous reference to decommission the existing mast.

- i. *The existing telecommunications mast and Department of Fire and Emergency Services paging equipment on lot 12383 shall be suitably decommissioned the satisfaction of the Shire prior to the use and/or operation of the proposed development commencing. Provision must be made on the proposed development to enable the paging equipment to be co-located on the proposed development to the specifications of the Department of Fire and Emergency Services.*

Please confirm the Planning Department has not objection to the amendment request seeking revision to two conditions as discussed previously and detailed in this email.

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