



City of Parramatta

File No: DA/1004/2021

S4.15 ASSESSMENT REPORT

Environmental Planning & Assessment Act 1979

SUMMARY

DA No:	DA/1004/2021
Property:	Lot 101 DP 1220278 State Heritage Register 1329, 21A Caloola Road, CONSTITUTION HILL NSW 2145
Proposal:	The construction of a telecommunications facility, incorporating a monopole and headframe, antennas, equipment shelter and ancillary equipment. The subject site is listed on the State Heritage Register. The application is Integrated Development pursuant to the Heritage Act 1977
Date of receipt:	29 October 2021
Applicant:	Lendlease
Owner:	Sydney Water Corporation Limited
Property owned by a Council employee or Councillor:	The site is not known to be owned by a Council employee or Councillor
Political donations/gifts disclosed:	None disclosed on the application form
Submissions received:	20
Recommendation:	Approval
Assessment Officer:	Matthieu Santoso

Legislative requirements

Environmental Planning Instruments	<ul style="list-style-type: none">• Commonwealth Telecommunications Act 1997;• SEPP (Transport and Infrastructure) 2021;• Parramatta Local Environmental Plan 2011;• Parramatta Development Control Plan 2011;
Zoning	R2 – Low Density Residential
Bushfire Prone Land	No
Heritage	Yes – Mount Dorothy Reservoir (Item No. I01329)
Heritage Conservation Area	No
Integrated development	Yes – Heritage Act 1977
Clause 4.6 variation	Yes - Height
Delegation	Parramatta Local Planning Panel

SITE DESCRIPTION AND CONDITIONS

The subject site is known as 21 Caloola Road, Constitution Hill. The current property description is Lot 101 DP 1220278. The site is an irregular allotment and has a moderate slope from the North-West to the South-East of approximately 11 metres over a distance of 48 metres.

The subject site has the following area and dimensions:

Area – 6,835 square metres

Frontage – 63.3 metres

Rear – 114 metres

East – 158 metres

West – 124 metres

The site is zoned R2 – Low Density Residential

The surrounding properties are also zoned R2 Low Density Residential.

The subject site currently accommodates Caloola Road reserve. It is noted that Mount Dorothy reservoir (Item No. I01329 of Schedule 5 of the Parramatta Local Environmental Plan 2011) is considered to form part of this property.

It is located within an established residential area characterised by single and double storey dwelling houses.

The site was inspected on 3/11/2021.

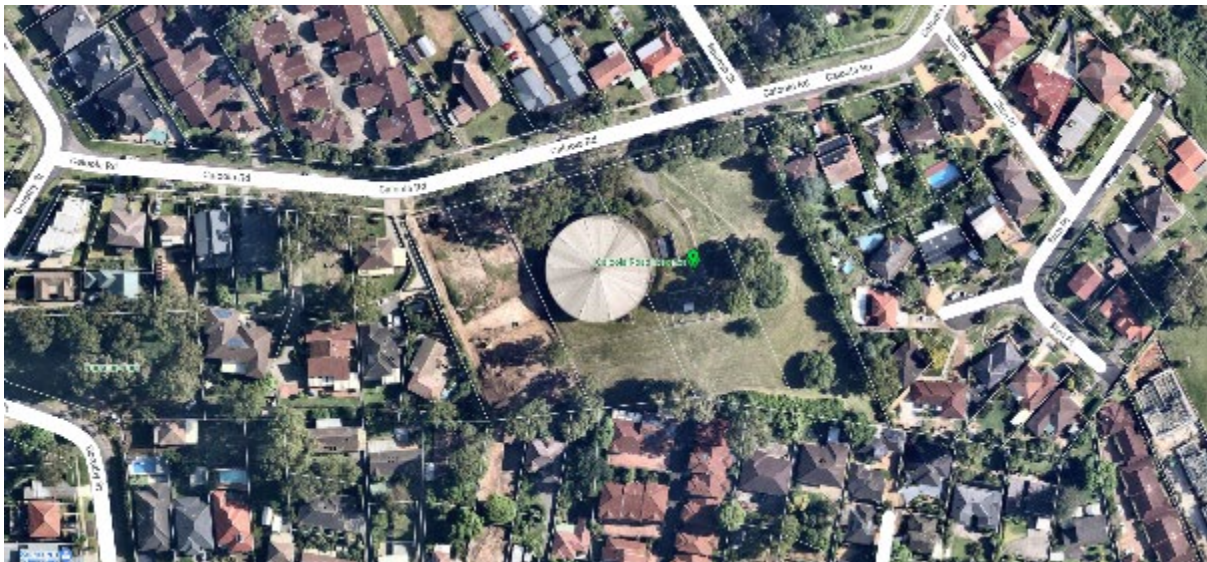


Figure 1. Aerial photograph of the subject site. Source – Nearmap



Figure 2. Zoning Map of the subject site. Source – Planning Portal

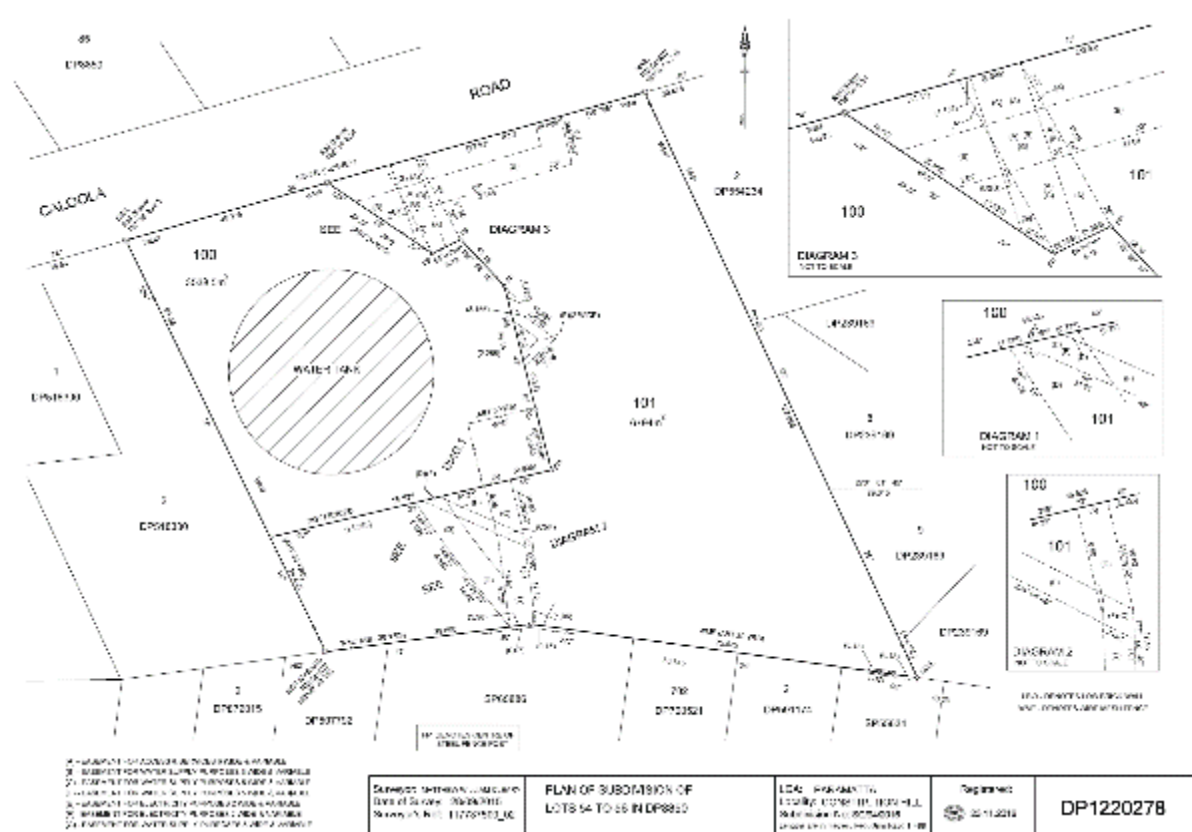


Figure 5. DP1220278



Figure 10 – View of the subject site from Caloola Road (looking east)

Figure 6. Figure 10 of Statement of Environmental Effect prepared by Lendlease dated 16/8/2021.



Figure 10 – View of the subject site from Boonah St across Caloola Rd (looking south)

Figure 7. Figure 10 of Statement of Environmental Effect prepared by Lendlease dated 16/8/2021.



Figure 8. Photomontage of the proposed telecommunications tower as viewed from Boonah Street



Figure 9. Photomontage of the proposed development as viewed from Caloola Road.



Figure 10. Photomontage of the proposed development as viewed from Page Street.



Figure 11. Photomontage of the proposed development as viewed from Slim Place.

Table 1 lists the considered candidates and the reason the sites were discounted.

Table 1 – Site Selection Candidates	
Site	Opportunities and Constraints
Candidate A – 21A Caloola Rd, Constitution Hill (new 20m Monopole) Zone: R2: Low Density Residential	Candidate A was selected as the prime candidate based on a number of considerations outlined in section 4.1 of this report. The location met coverage objectives, tenure could be secured and it was considered that a facility in this location would have a minimal detrimental visual impact on the locality.
Candidate B – 13 Emma Cres, Constitution Hill (new roof top installation) Zone: R2: Low Density Residential	This location was investigated but ultimately discounted due to previous feedback received from the community in 2010 when Optus originally sought this location.
Candidate C – 197 Binnalong Rd, Old Toongabbie (new 20m Monopole) Zone: RE1: Public Recreation	The site is within a community park which is adjacent to the Toongabbie Public school. Given the communities concern around Candidate B, this site was also discounted.

Figure 12. Site selection process taken from table 1 of the Statement of Environmental Effect prepared by Lendlease dated 16/8/2021.

SECTION 4.15 EVALUATION

THE PROPOSAL

The proposed development involves the construction of a telecommunications facility comprising of the following components:

- installation of a new freestanding monopole with a maximum height of 20.94 metres;
- a collar headframe at the top of the proposed monopole onto which the panel antennas will be mounted;
- installation of three Optus panel antennas and 18 remote radio units;
- establishment of a 47m² compound area at the base of the proposed monopole surrounded by a 2.4m high security fence;
- one (1) equipment shelter within the proposed compound area and ancillary equipment including feeder cables and cable trays.

It is noted Optus, as the benefactor of this consent, is a licensed carrier under the *Telecommunications Act 1977*.

INTEGRATED DEVELOPMENT

The subject site contains the 'Mount Dorothy Reservoir' which is identified an item of environmental heritage in Schedule 5 of the Parramatta Local Environmental Plan 2011 and listed on the State Heritage Register as Item No.01329.

Consequently, pursuant to Section 4.47 of the Environmental Planning and Assessment Act 1979, the proposed development is identified as Nominated Integrated Development as approval was required pursuant to Section 58 of the Heritage Act 1977. Accordingly, the matter was referred to Heritage NSW in which they have issued their General Terms of Approval on 4 February 2022.

PERMISSIBILITY

The site is zone R2 – Low Density Residential under Parramatta Local Environmental Plan 2011. The proposed works are defined as a Telecommunications Facility as follows:

“Telecommunications facility means —

- (a) any part of the infrastructure of a telecommunications network, or*
- (b) any line, cable, optical fibre, fibre access node, interconnect point equipment, apparatus, tower, mast, antenna, dish, tunnel, duct, hole, pit, pole or other structure in connection with a telecommunications network, or*
- (c) any other thing used in or in connection with a telecommunications network.”*

Whilst the proposed development is prohibited under the Parramatta Local Environmental Plan 2011, the proposed development is considered to be permissible under Division 21, Clause 2.142 of State Environmental Planning Policy (Transport and Infrastructure) 2021, which provides the following:

“2.142 Development permitted with Consent.

- 1. Development for the purposes of telecommunications facilities, other than development in section 2.140 or development that is exempt development under section 2.20 or 2.143, may be carried out by any person with consent on any land.*

2. *Before determining a development application for development to which this section applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Secretary for the purposes of this section and published in the Gazette.*"

The proposal in this development is not encompassed by Clause 2.20, 2.22, 2.140 or 2.144 of State Environmental Planning Policy (Transport & Infrastructure) 2021 and accordingly may be developed with consent on any land.

As such, the proposed development is considered to be permissible on the subject site.

Zone Objectives

The proposed development is generally consistent with the aims and objectives of the R2 Low Density Residential zone applying to the land as the proposed works:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that non-residential land uses are located in a context and setting that minimises impacts on the amenity of a low density residential environment.
- To allow for a range of community facilities to be provided to serve the needs of residents, workers and visitors in residential neighbourhoods.

ENVIRONMENTAL PLANNING INSTRUMENTS

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021 – CHAPTER 4: REMEDIATION OF LAND

The provisions of the SEPP have been considered in the assessment of the development application.

<input checked="" type="checkbox"/>	A review of Council's records reveal the site does not have an obvious history of a previous land use that may have caused contamination.
<input checked="" type="checkbox"/>	Historic aerial photographs were used to investigate the history of uses on the site.
<input checked="" type="checkbox"/>	A search of Council records did not include any reference to contamination on site or uses on the site that may have caused contamination.
<input checked="" type="checkbox"/>	A search of public authority databases did not include the property as contaminated.
<input checked="" type="checkbox"/>	The statement of Environmental Effects states that the property is not contaminated.
<input checked="" type="checkbox"/>	There is no specific evidence that indicates the site is contaminated.

Therefore, in accordance with Clause 4.6 of the State Environmental Planning Policy (resilience and hazards) 2021, the land is suitable for the proposed use.

STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021 – CHAPTER 10: SYDNEY HARBOUR CATCHMENT

The site is not located on the foreshore or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

The development is consistent with the controls contained with the deemed SEPP.

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021 – CHAPTER 2: INFRASTRUCTURE

The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Clause	Comment
Clause 2.48 – electricity infrastructure	N/A
Clause 2.118 – frontage to a classified road	N/A
Clause 2.119 – average daily traffic volume of more than 20,000 vehicles.	Caloola Road has less than 20,000 vehicles per day
Clause 2.142 – Telecommunications and other communication facilities	Yes – see below

The proposal seeks to construct a telecommunications facility in accordance with Clause 2.142(2) of the SEPP, the consent authority must take into consideration:

‘any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Secretary for the purposes of this clause and published in the Gazette’.

In respect to the above, *NSW Telecommunications Facilities Guidelines Including Broadband* (2010) was issued by the Director General. The Principles listed in this guideline have been provided below:

Principle	Comment
Principle 1: A telecommunications facility is to be designed and sited to minimise visual impact.	<p>The subject site is located within an established residential precinct currently being used as a historical water tank/public reserve.</p> <p>The application seeks the construction of a single monopole amongst other ancillary development.</p> <p>The proposal seeks to use a “eucalypt” colour scheme, successfully visually integrating itself with the surrounding landscape and State heritage listed water tank.</p>
Principle 2: Telecommunications facilities should be co-located wherever practical.	<p>There are currently no existing carrier telecommunications facilities located in the vicinity suitable for co-location.</p> <p>The applicant has advised that co-location was not a viable option as there are no existing facilities in the area that serve the necessary technical requirements appropriately.</p>
Principle 3: Health standards for exposure to radio emissions will be met.	<p>The applicant has provided documentation stating that the proposed installation will comply with Australian Communications and Media Authority (ACMA) regulatory arrangements with respect to electromagnetic radiation exposure levels.</p> <p>An EME Exposure Level report was also provided with the application in accordance with the requirements of the ‘Australian Communications and Media Authority and the Electromagnetic Radiation Standard’, and the ‘Mobile Phone Networks Code’.</p> <p>Conditions of consent will be imposed to ensure that the above requirements are met prior to the issue of the occupation certificate.</p>
Principle 4: Minimise disturbance and risk and maximise compliance.	<p>The siting and height of the proposal is not considered to have any unreasonable disturbances.</p>

	The proposal will not interfere with any obstacle limitation surface from any aerodrome, radio signals, vegetation or street furniture.
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STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021 – CHAPTER 2: VEGETATION IN NON-RURAL AREAS

The application has been assessed against the requirements of State Environmental Planning Policy (Biodiversity and Conservation) 2021. This Policy seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

A small portion of the site's southwest is mapped on the Biodiversity Offset Scheme map. It is noted that no trees are proposed to be removed under this consent. Council's Biodiversity Officer has reviewed the application and raises no objections to the proposal.

COMPLIANCE TABLE – LOCAL ENVIRONMENTAL PLAN 2011

The relevant matters to be considered under Parramatta Local Environmental Plan 2011 for the proposed development are outlined below.

Development standard	Compliance
Height of Buildings Control: 9m Proposed: 20.94	The proposal seeks a monopole to a height of 20.94m (132% variation). In this regard, Council has considered a clause 4.6 variation to the development standard. See discussion below.
Floor Space Ratio	N/A - no component of the proposal entails the introduction of GFA into the site.
Development on land intended to be acquired for public purposes	The proposal is not identified on the map.
Architectural roof features	An architectural roof feature is not proposed.
Development below mean high water mark	The proposal is not for the development of land that is covered by tidal waters.
Preservation of trees	N/A - tree removal is not proposed.
Heritage Conservation	Yes - The application was referred to Heritage NSW under the Heritage Act 1977. Comments received denoted that Heritage NSW have no objections to the proposal subject to conditions of consent.
Aboriginal Places of Heritage significance	Yes – the proposal will not adversely impact upon Aboriginal places of heritage significance.
Acid sulphate soils	An Acid Sulphate Soils Management plan is not required to be prepared.
Earthworks	Yes – No significant earthworks are proposed. Minor earthworks to facilitate the installation of the monopole is proposed. Council's development engineers have raised no objections to the proposed earthworks subject to conditions of consent.
Flood planning	The site is not identified by council as being flood prone.
Biodiversity protection	A small portion of the subject site's South-West is marked under the biodiversity offset scheme map. As the proposed works do not entertain any disturbance to the mapped space, Council's biodiversity officer has raised no objections to the proposal.
Water protection	The site is not identified on this map
Development on landslide risk land	The site is not identified on this map.
Affected by a Foreshore Building Line	The site is not located in the foreshore area.

Bushfire Prone Land	The site is not identified on this map.
Exceptions to Development Standards	Yes – See discussion below;

The proposal seeks to exceed the 9m Building Height development standard by 11.94 metres which represents a 132% variation to the Development Standard.

The applicant has submitted a written request seeking variation to the maximum building height prescribed by Clause 4.3, as required by Clause 4.6 of the PLEP 2011. Clause 4.6(2) provides that in certain circumstances, consent *...may be granted for development even though the development would contravene a development standards imposed by this or any other environmental planning instrument.*

The objectives of Clause 4.6 are as follows:

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

Clause 4.6(3) prescribes

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The departure from the maximum building height development standard is supported by a written request from the applicant under Clause 4.6 of the PLPEP 2011 as follows:

- *A maximum height of 9m above ground level is not feasible to provide the required service as there will be signal interference with vegetation and other structures;*
- *A 9m high tower would be equivalent in height to the ridgelines of dwellings in the locality and dramatically reduce the effective distance of the signal from the facility;*
- *The proposed 21m height would be compatible with other vertical elements in the locality, including power poles;*
- *The proposed height will not have any detrimental amenity impacts due to the relatively large distance to adjoining properties.*

In consideration of the variation to Clause 4.3 of the PLPEP 2011, the following is noted:

- The proposal is for a single infrastructure element that would support the residential nature of the surrounding locality.
- The tower will be appropriately finished with a similar colour scheme with the existing Sydney Water heritage listed Water Tank and trees on the subject site and surrounds.
- The size of the subject site as well as the central location of the tower means there is significant distances between the structure and adjoining properties.
- The proposal will not cast undue overshadowing onto adjoining properties.
- It is acknowledged that Heritage NSW have raised no concerns with the proposed height of the monopole in regard to its impact on the State Heritage Item.
- It is also noted that should the application be approved, no negative precedent for height variations to the surrounding locality will be established.

The Clause 4.6 statement and justification was considered against the following cases:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827*

Wehbe requires that the applicant must argue, and the consent authority must be satisfied, that compliance with the development standard is unreasonable or unnecessary with the following test:

Compliance with the development standard is reasonable or unnecessary because:

- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- (b) the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (c) the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- (d) the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or*
- (e) "the zoning or particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would be unreasonable or necessary"*

The objectives of Clause 4.3 of the PLEP2011 are:

- (1) The objectives of this clause are as follows—*
 - (a) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*
 - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
 - (c) to require the height of future buildings to have regard to heritage sites and their settings,*
 - (d) to ensure the preservation of historic views,*
 - (e) to reinforce and respect the existing character and scale of low density residential areas,*
 - (f) to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.*

Notwithstanding the non-compliance, it is noted that the proposal will achieve the objectives of Clause 4.3 and satisfy the first point of the test. In regard to the other points, the strict enforcement of the development standard is considered to be unreasonable and unnecessary for the following reasons:

- Strict compliance with Clause 4.3 would defeat the purpose of having the telecommunication infrastructure and lead to poor reception where the intent of the proposal is to improve this service to the locality.
- The 9m building height development standard is reflective of the dwelling/dual occupancy land uses typical of the surrounding R2 Low Density Residential zone and was not enforced with telecommunication infrastructure in mind.
- Whilst zoned R2 Low Density Residential, it is clear that the subject site would never be used for residential purposes given its existing status as a State Heritage Item.
- Existing non-compliances of the building height development standard already existing in the surrounding locality, in the form of Mount Dorothy reservoir as well as electricity infrastructure.

- 2. *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 and Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*

Al Maha provides that the consent authority (or Commission in that instance) "*had to be satisfied that there were proper planning grounds to warrant the grant of consent, and that the contravention was justified*" [21].

Baron elaborates on *Al Maha* in that "*the consent authority's consideration of the applicant's written request, required under cl 4.6(3), is to evaluate whether the request has demonstrated the achievement of the outcomes that are the matters in cl 4.6(3)(a) and (b). Only if the request does demonstrate the achievement of these outcomes will the request have "adequately addressed the matters required to be demonstrated" by cl. 4.6(3), being the requirement in cl. 4.6(4)(a)(i) about which the consent authority must be satisfied. The request cannot "adequately" address the matters required to be demonstrated by cl 4.6(3) if it does not in fact demonstrate the matter*" [78].

In this instance, Council is satisfied that applicant's Clause 4.6 Statement adequately addresses the matters in Clause 4.6(3) of the PLEP2011. It has provided a suitable argument as to why the standard is unreasonable and unnecessary in this case and demonstrates sufficient environmental planning grounds to justify contravening the Height of Building development standard.

COMPLIANCE TABLE – DEVELOPMENT CONTROL PLAN 2011

The relevant matters to be considered under Parramatta Development Control Plan 2011 for the proposed development are outlined below.

Part	Compliance	Discussion
2.4.2.1 Flooding	Yes	N/A Note: the subject site is not considered to be subject to flooding on Council's records.
2.4.3 Soil Management	Yes	No significant earthworks are proposed. Minor earthworks to facilitate the installation of the monopole is acceptable.
2.4.4 Land Contamination	Yes	Yes Note: the subject site is not considered to be contaminated on Council's records. Refer to SEPP (RESILIENCE AND HAZARDS) 2021 – CHAPTER 4: REMEDIATION OF LAND heading.
2.4.5 Air Quality	N/A	The nature of the proposed use is not considered to create any adverse impacts upon air quality.
3.3 Environmental Amenity	Yes	The nature of the proposed use is not considered to create any adverse impacts upon the environmental amenity of the locality.
3.4 Social Amenity	Yes	The proposal does not contribute to the provision of any increased opportunity for criminal or anti-social behaviour to occur.
3.5 Heritage	Yes	The application was referred to Council's internal heritage officer as well as Heritage NSW under the Heritage Act 1977. No objections were raised with regard to the proposal.
3.6 Movement and Circulation	Yes	The proposal is for an unoccupied use, and onsite parking is not required.
4.3.1 Strategic Precincts & Special character areas	N/A	The subject site is not located within special character area.
5.7 Telecommunication Facilities	Yes	The proposal is generally compliant with the objectives and general requirements set out under section 5.7 of the PDCP 2011. In this regard, whilst the proposed development is considered to be within 300m of nearby residential dwellings, the applicant has provided a suitable EME report.

REFERRALS

Internal Referrals	Comment
Heritage	Supported subject to conditions
Landscape	Supported subject to conditions
Environmental Health – General	Supported subject to conditions
Environmental Health – Waste	Supported subject to conditions.

Open Space & Natural Resources	Supported subject to conditions
External Referrals	Comments
Heritage NSW	Supported subject to General Terms of Approval

PUBLIC CONSULTATION

The application was notified in accordance with Council's consolidated notification procedures. In response, 9 submissions were received. A further 11 submissions were received outside of the formal 28 day notification period.

The issues raised within those submissions are addressed below. Issues have been grouped to avoid repetition:

Issue	Response
De-valuation of homes	This is not a consideration under the Environmental Planning & Assessment Act 1979.
Loss of green space	Council cannot restrict the development of a permissible use on private land. In this regard, only a small portion (43.7m ²) of the subject site is being used as the Optus lease area which is considered minor noting the extent of the existing park land.
Impacts on State heritage item	The application has been referred to both Council's Heritage Advisor as well as Heritage NSW pursuant to Section 57 (1)(e) of the <i>Heritage Act 1977</i> . No objections have been raised from a heritage viewpoint to the application, subject to conditions of consent.
EME radiation	The provided EME report denotes that the maximum predicted EME levels at 1.5m above ground level would equate to 3.51% of the maximum exposure limit under the Australian Standard. Council's Environmental Health Officer reviewed the proposal and raised no objections to the proposed EME report.
Height of the proposed monopole	Whilst the proposed height of the monopole exceeds the height limit under the Parramatta LEP 2011, the proposed development is not considered to set a negative precedent for residential dwellings within the immediate locality noting its use.
Acoustic impacts	Acoustic impacts associated with the ongoing use of the site will be managed by AS1055. A condition of consent will be imposed to ensure compliance.
Possibility of co-location to other facilities	<p>The submitted Statement of Environmental Effects denotes that the applicant has engaged with other suitable locations. The provided justification are as follows:</p> <p><i>"There were three locations considered that met the coverage objectives and site considerations... Following extensive scoping, the subject site was selected as it was considered to achieve the required coverage with the least impact to surrounding land uses. ... The main reason the alternate sites were not chosen was based on the community previous resistance due to the proximity to a childcare facility and school.</i></p> <p><i>Carriers seek to avoid residential areas and sensitive land uses where it is possible to do so, although this must be weighed against build implications and coverage feasibility provisions. In this case, it was not feasible for residential zones to be avoided. Although in a residential zone, the facility is being proposed on a site already being used by utility infrastructure and has been located as far away from dwellings as possible".</i></p>

	A such, the applicant has met their obligations in respect to the NSW Telecommunications Facilities Guidelines.
Permissibility of the telecommunications facility	The use of the site as a telecommunications facility is permissible under Division 21 in Clause 2.142 of the SEPP (Transport and Infrastructure) 2021.
Proximity to Childcare on 47 Dorothy Street, Constitution Hill & Pendle Hill High School	The development area has a distance of 315.28m to the existing Childcare on 47 Dorothy Street and 595.74m ² to the Pennant Hills High School. These distances are compliant with section 5.7 of the PDCP 2011.
View Obstruction	The subject site does not demonstrate any obstructions to the view that are not already apparent on the subject site. As a multitude of power lines, tall trees and a water reservoir are already considered to intrude upon the curtilage of the heritage item, the proposed monopole will not by an atypical introduction into the scenery.

Amended Plans

N/A

OTHER MATTERS

N/A

DEVELOPMENT CONTRIBUTIONS

Pursuant to Council's adopted Section 7.11 contributions plan, a contributions payment is not applicable for the proposed development type as it is not expected to attract new residents, workers and visitors to the LGA. In this regard, the proposed use is considered to be a utility structure.

BONDS

In accordance with Council's 2021/2022 Schedule of Fees and Charges, the developer will be obliged to pay Security Bonds to ensure the protection of civil infrastructure located in the public domain adjacent to the site.

EP&A REGULATION 2000

Applicable Regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia, compliance with the Home Building Act, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection have been addressed by appropriate consent conditions, refer to Appendix 1.

CONCLUSION

Conditional consent

After consideration of the development against Section 4.15 of the Environmental Planning and Assessment Act 1979, and the relevant statutory and policy provisions, the proposal is suitable for the site and is in the public interest. Therefore, it is recommended that the application be approved subject to conditions.

RECOMMENDATION

Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act, 1979:

- (a) **That** the Parramatta Local Planning Panel support a variation to Clause 4.3 – Building Height of the Parramatta Local Environmental Plan for the following reasons:
1. A written request to vary the building height has been received and is well drafted; and
 2. The applicant has provided sufficient environmental planning grounds to warrant departure of the building height control in the circumstances of this case.
- (b) **That** the Parramatta Local Planning Panel (PLPP), exercising the functions of Council, pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, issue consent to DA/1004/2021 for the construction of a telecommunications facility, incorporating a monopole and headframe, antennas, equipment shelter and ancillary equipment on land at 21A Caloola Road, Constitution Hill 2145.

The reasons for approval are:

1. The development is permissible in the R2 Low Density Residential zone pursuant to the SEPP (Transport and Infrastructure) 2021 and satisfies the requirements of all of the applicable planning controls with exception to the maximum height under the Parramatta Local Environmental Plan 2011.
 2. The development will not create adverse impacts onto the locality and will be sympathetic with the existing area.
 3. The proposed telecommunications facility will seek to provide the greater community with essential telecommunication infrastructure.
 4. For the reasons given above, approval of the application is in the public interest.
- (c) **Further**, that objectors be advised of the Panel's decision.

“Appendix 4” to Section 4.15 Assessment Report - DA/1004/2021

DRAFT CONDITIONS OF CONSENT

Upon the signature of the applicable delegate, the conditions in this Appendix will form the conditions of development consent.

Development Consent No.: DA/1004/2021
Property Address: Lot 101 DP 1220278 State Heritage Register 1329
21A Caloola Road, CONSTITUTION HILL NSW 2145

PART A – GENERAL CONDITIONS

PA0001 #Approved Plans & Support Doc(DIEP Mandatory Cond)

1. Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise:

Architectural Drawings (Project No. S8922)

Drawing/Plan No.	Issue	Plan Title	Dated
P1	05	Draft Site Layout	15/10/2021
P2	05	Draft Site Elevation	15/10/2021

Specialist Reports

Document	Ref No.	Issue	Prepared By	Dated
Statement of Environmental Effects	-	-	Jordan Leverington OBO Lendlease	16/08/2021
Waste Management Plan	-	-	Lendlease	25/10/2021
Arboricultural Impact Assessment Report	211012_21a Caloola_AIA	-	Jack Williams OBO Urban Arbor Pty Ltd	12/10/2021
Heritage Impact Statement	J5015	-	Weir Phillips & Heritage Planning	August 2021
Heritage Council of NSW – General terms of approval integrated development application letter.	CNR-30703	-	Tempe Beaven	4/02/2022

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of consent, the condition prevails.

Note: An inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development

PA0003 Construction Certificate

2. Prior to commencement of any construction works associated with the approved development (including excavation if applicable), it is mandatory to obtain a Construction Certificate. Plans, specifications and relevant documentation accompanying the Construction Certificate must include any requirements imposed by conditions of this Development Consent.

Reason: To ensure compliance with legislative requirements.

PA0004 No encroachment on Council and/or Adjoining proper

3. The development must be constructed within the confines of the property boundary. No portion of the proposed structure, including footings/slabs, gates and doors during opening and closing operations must encroach upon Council's footpath area or the boundaries of the adjacent properties.

Reason: To ensure no injury is caused to persons and the building is erected in accordance with the approval granted within the boundaries of the site.

PA0013 #LSL Payment Const> \$25,000 (DIEP Mandatory Cond)

4. Before the issue of a construction certificate, the applicant is to ensure that the person liable pays the long service levy as calculated at the date of this consent to the Long Service Corporation or Council under section 34 of the Building and Construction Industry Long Service Payments Act 1986 and provides proof of this payment to the certifier.

Note: The Long Service Levy is to be paid directly to the **Long Service Corporation** at www.longservice.nsw.gov.au. For more information, please contact the Levy support team on 13 14 41.

Reason: To ensure that the long service levy is paid.

OA0005 No trees are to be removed on public property

5. No trees on public property (footpaths, roads, reserves etc.) are to be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works, unless approved in this consent.

Reason: To ensure adequate protection of existing environmental assets and to maintain public amenity.

PANSC Non-standard - General Matters

6. Conditions stipulated within the stamped General terms of approval letter by the Heritage Council of NSW dated 4 of February 2022 must be satisfied in full prior to the release of any Occupation Certificate.

Reason: To comply with concurrence matters pursuant to section 4.47 of the Environmental Planning and Assessment Act 1979.

EPA0062 Soil and Water Management – Stockpiles

7. Stockpiles of topsoil, sand, aggregate, soil or other material are not to be located on any drainage line or easement, natural watercourse, footpath or roadway and shall be protected with adequate sediment controls.

Reason: To ensure that building materials are not washed into stormwater drains.

8. The applicant is to ensure that the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian

Communications and Media Authority and the Electromagnetic Radiation Standard and demonstrate compliance with the Mobile Phone Networks Code.

Reason: To ensure compliance with the regulations.

PART B – BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

(Note: Some conditions contained in other sections of this consent (including prior to occupation/use commencing) may need to be considered when preparing detailed drawings/specifications for the Construction Certificate.)

PB0030Infrastructure & Restoration Adm. fee for all DAs

9. An Infrastructure and Restoration Administration Fee must be paid to Council prior to the issue of a Construction Certificate.

The fee will be in accordance with Councils adopted 'Fees and Charges' at the time of payment.

Note: Council's Customer Service Team can advise of the current fee and can be contacted on 9806 5524.

Reason: To comply with Council's adopted Fees and Charges Document and to ensure compliance with conditions of consent.

PBNSC Non-standard - Prior to the issue of a CC

10. Prior to the release of a Construction Certificate, amended plans denoting a "Eucalyptus green" finish to the proposed monopole are to be shown/annotated to the satisfaction of the certifier.

Reason: To ensure a visual subservient design.

PART C – BEFORE THE COMMENCEMENT OF BUILDING WORK

PC0001 #Appointment of PCA

11. Prior to commencement of work, the person having the benefit of the Development Consent and Construction Certificate approval must:

- (a) Appoint a Principal Certifying Authority (PCA) and notify Council in writing of the appointment (irrespective of whether Council or an accredited private certifier) within 7 days; and
- (b) Notify Council in writing a minimum of 48 hours prior to work commencing of the intended date of commencement.

The Principal Certifying Authority must determine and advise the person having the benefit of the Construction Certificate when inspections, certification and compliance certificates are required.

Reason: To comply with legislative requirements.

PC0002 Enclosure of the site

12. The site must be enclosed by a 1.8m high security fence erected wholly within the confines of the site to prevent unauthorised access. The fence must be installed to the satisfaction of the Principal Certifying Authority prior to the commencement of any work on site.

Reason: To ensure public safety.

PC0003 Site Sign

13. A sign must be erected in a prominent position on any site involving excavation, erection or demolition of a building in accordance with Clause 98 A (2) of the Environmental Planning and Assessment Regulations 2000 detailing:
- (a) Unauthorised entry of the work site is prohibited;
 - (b) The name of the principal contractor (or person in charge of the work site), their telephone number enabling 24hour contact; and
 - (c) The name, address and telephone number of the Principal Certifying Authority;
 - (d) The development consent approved construction hours;
 - (e) The sign must be maintained during excavation, demolition and building work, and removed when the work has been completed.
 - (f) This condition does not apply where works are being carried out inside an existing building.

Reason: Statutory requirement.

BC0001 Toilet facilities on site

14. Prior to work commencing, adequate toilet facilities are to be provided on the work site.

Reason: To ensure adequate toilet facilities are provided.

PC0005 Public liability insurance

15. Public risk insurance in the amount of not less than \$20 million or such other amount as Council may require by notice) must be obtained and furnished to Council before any works authorised by this consent are conducted:

- (a) Above;
- (b) Below; or
- (c) On

Any public land owned or controlled by Council. The public risk insurance must be maintained for the period during which these works are being undertaken.

The public risk insurance must be satisfactory to Council and list Council as an insured and/or interested party.

A copy of the insurance policy obtained must be forwarded to Council before any of the works commence.

Note: Applications for hoarding permits, vehicular crossing etc. will require evidence of insurance upon lodgement of the application.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works authorised by this consent conducted above, below or on any public land owned or controlled by Council.

LC0002#Tree protection as per arborist report

16. The trees identified for protection within the consent shall be protected prior to and during the demolition/construction process in accordance with the Arboricultural Impact Assessment and Tree Protection Plan prepared by Urban Arbor (Ref No – 211012_21a Caloola_AIA) dated 12 October 2021 and the conditions of consent.

Reason: To ensure the protection of the tree(s) to be retained on the site.

DC0006 Erosion and Sediment Control measures

17. Erosion and sediment control measures are to be installed in accordance with the publication 'Urban Stormwater: Soils and Construction "The Blue Book" 2004 (4th edition) prior to the commencement of any demolition, excavation or construction works upon the site. These measures are to be maintained throughout the entire works.

Reason: To ensure soil and water management controls are in place before site works commence.

PART D – WHILE BUILDING WORK IS BEING CARRIED OUT

PD0001 Copy of development consent

18. A copy of this development consent together with the stamped plans, referenced documents and associated specifications is to be held on-site during the course of any works to be referred to by all contractors to ensure compliance with the approval and the associated conditions of consent.

Reason: To ensure compliance with this consent.

PD0003 Dust Control

19. Dust control measures shall be implemented during all periods of earth works, demolition, excavation and construction to minimise the dust nuisance on surrounding properties. In this regard, dust minimisation practices must be carried out in accordance with Section 126 of the Protection of the Environment Operations Act 1997.

Reason: To protect the amenity of the area.

PD0004 Materials on footpath

20. No building materials skip bins, concrete pumps, cranes, machinery, temporary traffic control, signs or vehicles associated with the construction, excavation or demolition shall be stored or placed on/in Council's footpath, nature strip, roadway, park or reserve without the prior approval being issued by Council under section 138 of the Roads Act 1993.

Reason: To ensure pedestrian access.

PD0006 Hours of work and noise (DPIE Mandatory Condition)

21. The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

- **7am to 5pm on Monday to Friday**
- **8am to 5pm on Saturday**

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Note: Any variation to the hours of work requires Council's approval.

Council may permit an extension to the approved hours of work in extenuating or unforeseen circumstances subject to an application and approval by City of Parramatta Council (CoPC) in accordance with the 'After Hours Works for Approved Development Applications Policy' (Policy).

A copy of this Policy and associated application form is available on the CoPC website. A fee will apply to any application made in accordance with this Policy.

The matters of consideration of any extension sought would include, but not be limited to the following aspects and should be detailed in any application made:

- Nature of work to be conducted;
- Reason for after-hours completion;
- Residual effect of work (noise, traffic, parking);
- Demographic of area (residential, industrial);
- Compliance history of subject premises;
- Current hours of operation;
- Mitigating or extenuating circumstance; and
- Impact of works not being completed.

Reason: To protect the amenity of the surrounding area.

PD0007 Complaints register

22. The applicant must record details of all complaints received during the construction period in an up to date complaints register. The register must record, but not necessarily be limited to:

- (a) The date and time of the complaint;
- (b) The means by which the complaint was made;
- (c) Any personal details of the complainants that were provided, or if no details were provided, a note to that effect;
- (d) Nature of the complaints;
- (e) Any action(s) taken by the applicant in relation to the complaint, including any follow up contact with the complaint; and
- (f) If no action was taken by the applicant in relation to the complaint, the reason(s) why no action was taken.

The complaints register must be made available to Council and/or the Principal Certifying Authority upon request.

Reason: To allow the Principal Certifying Authority/Council to respond to concerns raised by the public.

PD0008 Construction Noise (DPIE Mandatory Cond)

23. While building work is being carried out, and where a noise and vibration management plan is approved under this consent, the applicant must ensure that any noise generated from the site is controlled in accordance with the requirements of that plan.

OR

While building work is being carried out and where no noise and vibration management plan is approved under this consent, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

Reason: To protect the amenity of the neighbourhood.

PD0010 Survey Report

24. While building work is being carried out, a registered surveyor is to measure and mark the positions of the following and provide them to the principal certifier: -

- (a) All footings/ foundations
- (b) At other stages of construction – any marks that are required by the principal certifier

Reason: To ensure buildings are sited and positioned in the approved location.

TD0001 Road Occupancy Permit

25. Occupation of any part of the footpath or road at or above (carrying out work, storage of building materials and the like) during construction of the development shall require a Road Occupancy Permit from Council. The applicant is to be required to submit an application for a Road Occupancy Permit through Council's Traffic and Transport Services, prior to carrying out the construction/restoration works.

Reason: To ensure proper management of Council assets.

TD0002 Oversize vehicles using local roads

26. Oversize vehicles using local roads require approval from the National Heavy Vehicle Regulator (NHVR). The applicant is required to submit an application for an Oversize Vehicle Access Permit through NHVR's portal (www.nhvr.gov.au/about-us/nhvr-portal) prior to driving through local roads within the City of Parramatta LGA.

Reason: To ensure maintenance of Council's assets.

LD0001 No removal of trees on public property

27. No trees on public property (footpaths, roads, Council reserves, etc.) are permitted to be removed, pruned or damaged during construction including the installation of fences, hoardings or other works, unless approved in this consent.

Reason: Protection of existing environmental infrastructure and community assets.

LD0004 Material storage and trees

28. No materials (including waste and soil), equipment, structures or goods of any type are to be stored, kept or placed within 5m of the trunk of a tree or within the drip line of any tree.

Reason: To ensure the protection of the tree(s) to be retained on the site.

LD0006#Excavation to be supervised by arborist

29. Any excavation required within six (6) metres of any tree located within the reserve is to be supervised by an Australian Qualifications Framework (AQF) Level 3 arborist. If during excavation the Arborist identifies remedial work is necessary, it is to be supervised by this Arborist, including the pruning of roots greater than 30mm in diameter.

Reason: To provided adequate protection of trees.

LD0008 No attachments to trees

30. No service, structure, conduit or the like is permitted to be fixed or attached to any tree.

Reason: To ensure the protection of the tree(s).

EPD0001 Dust Control

31. Dust control measures shall be implemented during all periods of earth works, demolition, excavation and construction to minimise the dust nuisance on surrounding properties. In this regard, dust minimisation practices must be carried out in accordance with Council's Guidelines for Controlling Dust from Construction Sites and Section 126 of the Protection of the Environment Operations Act 1997.

Reason: To protect the amenity of the area.

DD0005 Erosion & sediment control measures

32. Works are not to result in sedimentation and or run-off from the approved works onto the adjoining properties and or public lands. The person having the benefit of this consent must ensure sediment is not tracked out from the development site.

Reason: To ensure no adverse impacts on neighbouring properties.

EWD0003 Waste data file maintained

33. A Waste Data file is to be maintained, recording building/demolition contractor's details and waste disposal receipts/dockets for any demolition or construction wastes from the site. These records must be retained and made available to Council on request.

Reason: To confirm waste minimisation objectives under Parramatta Development Control Plan 2011 are met.

PART E – BEFORE THE ISSUE OF AN OCCUPATION CERTIFICATE

PE0001 Occupation Certificate

34. Occupation or use of the building or part is not permitted until an Occupation Certificate has been issued in accordance with Section 6.9 of the Environmental Planning and Assessment Act 1979.

Reason: To comply with legislative requirements of the Environmental Planning and Assessment Act 1979.

BE0001 Record of inspections carried out

35. In accordance with Clause 162B of the Environmental Planning and Assessment Regulation 2000, the Principal Certifying Authority responsible for the critical stage inspections must make a record of each inspection as soon as practicable after it has been carried out. The record must include:

- (a) The development application and Construction Certificate number as registered;
- (b) The address of the property at which the inspection was carried out;
- (c) The type of inspection;
- (d) The date on which it was carried out;
- (e) The name and accreditation number of the certifying authority by whom the inspection was carried out; and
- (f) Whether or not the inspection was satisfactory in the opinion of the certifying authority who carried it out.

Reason: To comply with statutory requirements.

PART F – OCCUPATION AND ONGOING USE

PF0017 Goods not to be displayed outside premises

36. No goods are to be stored/displayed outside the walls of the building.

Reason: To ensure visual amenity.

PF0049 Graffiti Management

37. The owner/manager of the site/business is responsible for the removal of all graffiti from the building/structures/signage and/or fencing within 48 hours of its application.

Reason: To ensure the removal of graffiti.

PF0004 External Plant/Air-conditioning noise levels

38. Any external plant/air-conditioning system must not exceed a noise level of 5dBA above the background noise level when measured at the boundaries of the property.

Reason: To minimise noise impact of mechanical equipment.

Date: 20 April 2022
Responsible Officer: Matthieu Santoso

