

### **3.7 PROPOSED UPGRADE & RELOCATION OF EXISTING TELECOMMUNICATION FACILITY - LOT 6 (NO. 63-69) JAMES ST GUILDFORD**

(Guildford) (Development Services)

#### **KEY ISSUES**

- The application proposes to upgrade and relocate an existing Telecommunication Facility at Lot 6 (No.63-69) James street Guildford.
- The new infrastructure will comprise a 21.4m (approximate) high tower setback 6.5m from the rear (south) boundary and 3m from the side (east) boundary.
- The application was advertised in accordance with the City's Telecommunications (Mobile Phone) Facilities (POL-C-059), and a total of forty-eight (48) submissions were received, of which thirty-eight (38) were objections and ten (10) were non-objections.
- Issues relating to health, amenity, appropriateness in proposed location and vegetation removal were generally the main grounds for objection.

It is recommended that the application for the proposed upgrade and relocation of the existing Telecommunication Facility at Lot 6 (No.63-69) James Street Guildford be refused. It is further recommended that the Council advise the applicant that a more suitable location in Guildford would be considered more favourably by Council.

#### **AUTHORITY/DISCRETION**

Council may approve (with or without conditions) or refuse to approve the application. If the applicant is aggrieved with the decision of the Council a right of appeal may exist in accordance with Part 14 of the Planning and Development Act 2005.

#### **BACKGROUND**

Applicant:	Telstra Corporation Limited
Owner:	Whiteman Estate Pty Ltd
Zoning:	TPS - Residential Development MRS - Urban
Strategy/Policy:	Local Planning Policy - Guildford Conservation Precincts (POL-C-106) Telecommunications (Mobile Phone) Facilities (POL-C-059)
Development Scheme:	Town Planning Scheme No.9

Existing Land Use:	Old factory building; several sheds and low impact telecommunication facility.
Lot Size:	4396m <sup>2</sup>
Area:	-
Use Class:	Telecommunication Facility

## **DETAILS OF THE PROPOSAL**

The proposed upgrade and relocation of the existing Telecommunication Facility is characterised by the following:

- Approximately 21.4m high slimline tower;
- Setback approximately 6.5m from the rear (southern) boundary and approximately 3m from the side (eastern) boundary;
- The tower is to have a diameter of 752mm at the base; 520mm at the top; and the upstand is to have a diameter of 140mm.
- Tower colour: the applicant has advised that the best colour for the long term is galvanised grey as supplied by the manufacturer. They advised that its finish softens within 12 months. However, if the Council desires an alternative colour the applicant is willing to paint the tower to a colour specified by the Council.

## **DESCRIPTION OF SITE**

The subject site has a total land area of 4396m<sup>2</sup> and has frontage to both James and Scott Streets. The site is relatively flat and has previously been used by Ross's Hardware for the production of timber products. There are four existing buildings on site. The existing factory building located on the corner of James and Scott Streets is listed on the City's Municipal Inventory of Heritage Places. The other three existing buildings are not on the City's Heritage List.

Land immediately west and south of the site is predominantly single residential with lots ranging in size from 356m<sup>2</sup> to 754m<sup>2</sup>. To the east of the site is Ross's Hardware.

It should be noted that as a result of Council's resolution to adopt ODP 128, and thereby support the removal of the existing factory building located on the corner of James and Scott Streets, a development application for their demolition has since been approved under delegated authority.

## **SITE HISTORY/PREVIOUS APPROVALS**

The subject properties have the following planning application history:

27/07/1987 - Approval Issued for a change of use to Showroom (DA-3604/1987)

17/01/2001 - Approval Issued for a mobile telephone tower (DA-12802/2000)

12/04/2006 - Council adopted an eighteen (18) lot residential ODP, which is yet to be endorsed by the WAPC.

2006 - Received application for Telecommunications Facility which is currently being processed (DA-462/2006)

The subject property has the following building licence application history:

June 2006 - Received demolition licence application for dwelling & shed which is pending this development approval (BL-33/2006)

## **OTHER RELEVANT PREVIOUS DECISIONS OF COUNCIL**

Nil

## **APPLICANT'S SUBMISSION**

The applicant has provided the following summarised information in support of the application:

- *"...there is currently a mobile telephone base station at the above location, this installation currently comprises a low impact equipment room in the south-east corner of Lot 6 and antennas located on a disused sawdust hopper which is located on Lot 124 Scott Street"*
- *"The existing installation is currently controlled by 3GIS and Telstra has the role of ongoing management of Telco infrastructure for the 3GIS consortium"*
- *"...the site offers two opportunities for resolution; the first opportunity would be to leave the existing antennas on the existing disused sawdust hopper and to relocate the existing equipment room to the base of the hopper thereby consolidating the infrastructure onto the existing Lot 124. Having viewed the owners plans for development of the site we believe that whilst retention of the hopper and consolidation of the equipment onto the existing Lot 124 is a viable option, such option would not be in the long term interest of the adjoining land and we believe that retention of that infrastructure amongst future residential medium density development is an unattractive resolution"*
- *"A second alternative would be to leave the existing equipment room in its current location in the south-east corner of Lot 6 and to install a slimline pole adjacent to the existing equipment room to support the antennas. This solution would facilitate future removal of the disused sawdust hopper (as part of the redevelopment of the site) and would ensure a more aesthetic solution to the long term provision of continuing mobile telephone communications for the Guildford community exists"*
- *"In line with the above, Telstra is proposing that the second solution is the more appropriate resolution given the future development of the surrounding land and we have obtained agreement from the landowner to apply for approval for that option"*
- *"It is recognised that the setback to residential property required within Council's Telecommunications Policy cannot be met for the slimline pole option, however Telstra believes that the slimline pole option provides the best long term solution"*

*for this infrastructure and provides an added benefit of allowing the removal of the existing disused sawdust hopper, retention of which we believe would be visually inconsistent with the future development of the site"*

## **PUBLIC CONSULTATION**

The public consultation process for the proposed 'Telecommunication Facility' at Lot 6 (No.63-69) James Street, Guildford comprised the following:

- A sign was placed on site;
- A notice was placed in the local newspaper;
- Letters were posted to land owners within 200m of the subject properties.

Forty-eight (48) submissions were received, of which thirty-eight (38) were objections, ten (10) were non-objections.

## **CONSULTATION WITH OTHER AGENCIES AND/OR CONSULTANTS**

N/A

## **REPORT**

### **Local Planning Policy - Guildford Conservation Precincts (POL-C-106)**

Guildford is widely regarded as a town with a high level of cultural significance associated with the post-colonial settlement of Perth. At a national level, Guildford has been designated by the National Trust as an historic town and included in the Register of the National Estate. At a state level, there are currently 28 individual places in Guildford on the Heritage Council of Western Australia's (Heritage Council) Register of Heritage Places, and this number is likely to increase in the fullness of time. At a local level, Guildford is included in the City of Swan's (the City) Town Planning Scheme 9 (TPS9) as a Conservation Precinct, and the City has adopted a Conservation Policy (the Guildford Conservation Policy) for the place.

It is important to retain the cultural values of the town as it develops. This Local Planning Policy (Policy) replaces the Guildford Design and Development Guide adopted by the Council in 1992 and is intended to provide detailed guidance to property owners and the City to achieve good development outcomes in an important heritage context.

The Guildford Conservation Precinct Design Guidelines are an integral part of this Policy, and are set out in Attachment 1. The guidelines are structured according to the following principal design elements that make up its heritage character:

- a) Scale or Size
- b) Form
- c) Siting
- d) Materials and Colours; and
- e) Detailing

The Guildford Conservation Precinct Design Guidelines relate solely to residential and commercial/industrial building construction within Guildford. Therefore the City's Local Policy has not been used to assess the proposed Telecommunication Facility.

### **Telecommunications (Mobile Phone) Facilities Policy (POL-C-059)**

The City's Telecommunication (Mobile Phone) Facilities Policy is structured so that development is assessed against General Principles (GP) and Development Standards (DS). The GP's and DS's which the proposal does not comply with are discussed below.

GP 7.1.1 The design and siting of telecommunication facilities should be integrated with existing buildings and structures, unless it is impractical to do so, in which case they should be sited and designed so as to minimise any adverse impact on the amenity of the surrounding area.

Comment: The proposed telecommunication tower is approximately 21.4m in height and is to be setback approximately 6.5m and 3m from the residential properties to the south and east respectively. Therefore the proposal is considered inconsistent with the above as its height and location is considered to have an adverse impact on nearby residences.

GP 7.1.6 There is a general presumption against locating telecommunication facilities in any zone where the predominant intent of the zone is for Residential development.

Comment: The subject property is zoned Residential Development, and is the subject of an eighteen (18) lot residential ODP which Council adopted in April 2006. The WAPC is yet to endorse the ODP; however it is likely that the property will be used for residential purposes in the future. Additionally, residences exist to the south, east, and west of the subject property. Therefore, the predominant intent of the area is residential, thus the proposal is inconsistent with General Principle 7.1.6.

DP (d) Setback a minimum of 200m from any dwelling or residential zoned land;

Comment: The proposed Telecommunication Tower is to be located approximately 6.5m and 3m from the properties to the south and east respectively. Therefore, the proposal is not consistent with Development Standard (d).

### **Australian Communications Authority**

The Australian Communications Authority (ACA) is a government regulator of radio communications and telecommunications. Established in July 1997, the ACA falls within the portfolio of Communications, Information Technology and the Arts. It exercises powers under the Telecommunications Act 1997, the Telecommunications (Consumer Protection and Service Standards) Act 1999 and the Radio Communications Act 1992 and other related legislation. The ACA works closely with the communications industry to achieve active self-regulation, while ensuring industry compliance with licence conditions, codes and standards and monitoring the effect of regulations to ensure they are responsive to the community's needs.

The Australian Communications Authority has introduced a regulatory scheme to limit human exposure to electromagnetic radiation (EMR) from radio communications and telecommunications transmitters. The scheme centres on a mandatory standard that came into effect on 1 February 1999. All licensees of radio communications transmitters (e.g. Telstra, Optus) are required to comply with the standard.

There is a range of penalties including fines, seizure and forfeiture of stock, ceasing to supply products until non-compliance is corrected, or prosecution.

Offences include:

- breaching licence conditions (conditions specify that licensees must comply with applicable standards); and
- making a false declaration.

### **Telecommunication Act 1997**

In a limited number of circumstances carriers have immunity from state and territory laws and can install telecommunications facilities under Commonwealth law. One example relates to the installation of facilities which have been identified as 'low-impact' in the *Telecommunications (Low-Impact Facilities) Determination 1997* and its Amendment No. 1 of 1999.

Low-impact facilities are those considered essential to maintaining telecommunications networks, but do not have a high visual impact and are unlikely to cause significant disruption to the community during installation or operation. They include some radiocommunications facilities, underground and above-ground housing, underground cables, public payphones, emergency and co-located facilities.

It is important that the City understands the extent of the carriers powers under the Telecommunication Act 1997. In summary, the following table (an excerpt from Schedule 3 of the Telecommunication Act 1997) outlines the carriers extent of power:

- A carrier may enter on land and exercise any of the following powers:
  - (a) the power to inspect the land to determine whether the land is suitable for the carrier's purposes;
  - (b) the power to install a facility on the land;
  - (c) the power to maintain a facility that is situated on the land.
- The power to install a facility may only be exercised if:
  - (a) the carrier holds a facility installation permit; or
  - (b) the facility is a low-impact facility; or
  - (c) the facility is a temporary facility for use by, or on behalf of, a defence organisation for defence purposes; or
  - (d) the installation is carried out before 1 July 2000 for the sole purpose of connecting a building to a network that was in existence on 30 June 1997.
- A facility installation permit will only be issued in relation to a facility if:
  - (a) the carrier has made reasonable efforts to negotiate in good faith with the relevant proprietors and administrative authorities; and
  - (b) in a case where the facility is a designated overhead line—each relevant administrative authority has approved the installation of the line; and
  - (c) the telecommunications network to which the facility relates is or will be of national significance; and
  - (d) the facility is an important part of the telecommunications network to which the

- facility relates; and
- (e) either the greater part of the infrastructure of the telecommunications network to which the facility relates has already been installed or relevant administrative authorities are reasonably likely to approve the installation of the greater part of the infrastructure of the telecommunications network to which the facility relates; and
- (f) the advantages that are likely to be derived from the operation of the facility in the context of the telecommunications network to which the facility relates outweigh any form of degradation of the environment that is likely to result from the installation of the facility.
- In exercising powers under this Part, a carrier must comply with certain conditions, including:
  - (a) doing as little damage as practicable;
  - (b) acting in accordance with good engineering practice;
  - (c) complying with recognised industry standards;
  - (d) complying with conditions specified in the regulations;
  - (e) complying with conditions specified in a Ministerial Code of Practice;
  - (f) complying with conditions specified in a facility installation permit;
  - (g) giving notice to the owner of land.

Division 4 of Schedule 3 (of the Telecommunication Act 1997) provides in detail the carriers powers with regard to maintaining an existing facility. The main concern with these powers is that the Act enables a carrier to enter a property in which there is an existing facility and undertake maintenance of that facility. 'Maintenance' of a facility may entail any of following:

1. the alteration, removal or repair of the original facility; and
2. the provisioning of the original facility with material or with information (whether in electronic form or otherwise); and
3. ensuring the proper functioning of the original facility; and
4. the replacement of the whole or a part of the original facility in its original location, where the conditions specified in subclause (5) are satisfied; and
5. the installation of an additional facility in the same location as the original facility, where the conditions specified in subclause (6) are satisfied; and
6. in a case where any tree, undergrowth or vegetation obstructs, or is likely to obstruct, the operation of the original facility—the cutting down or lopping of the tree, or the clearing or removal of the undergrowth or vegetation, as the case requires.

Points 4 and 5 enable the carrier to modify or replace an existing structure or install an additional facility subject to conditions. Where the carrier is replacing whole or part of the original facility, it must comply with the following conditions:

1. the volume of the replacement facility does not exceed the volume of the original facility; or
2. the replacement facility is located inside a fully-enclosed building, the original facility was located inside the building and the building is not modified externally as a result of the replacement of the original facility; or
3. the replacement facility is located inside a duct, pit, hole, tunnel or underground conduit;

Where the carrier is installing an additional facility, it must comply with the following conditions:

1. the combined levels of noise that are likely to result from the operation of the additional facility and the original facility are less than or equal to the levels of noise that resulted from the operation of the original facility;
2. either:
  - the additional facility is located inside a fully-enclosed building, the original facility is located inside the building and the building is not modified externally as a result of the installation of the additional facility; or
  - the additional facility is located inside a duct, pit, hole, tunnel or underground conduit;

With regard to subject proposal and in light of above information, the applicant may in fact be able to replace the existing sawdust hopper with a slimline tower, as long it is located in exactly the same position as the hopper and does not exceed its volume. This considered highly achievable, as the hoppers volume is considerable greater than a slimline tower. In the event that Council resolves to refuse the application, the carrier, may go ahead and undertake the described 'maintenance'.

The applicant has advised that it would prefer not to take this path of action, as it would disgruntle surrounding landowners. Instead it would prefer to work with Council to find a more appropriate location within Guildford for the facility. One location that has been discussed with City planning staff, is the light industrial zoned land on the northern side of James Street. The properties in this location generally comprise warehouses, showrooms and factories which are considered more compatible with the proposed tower. In addition the rear boundary of these properties abuts the railway reserve, which means the tower is likely to affect fewer residences.

### **Public Consultation**

The following key issues were derived from the public consultation process:

#### Health Effects

The City acknowledges the community's concerns in respect to the perceived negative health effects of electromagnetic radiation and radio frequency energy being emitted from mobile telephone towers but it must also be acknowledged that the control of emissions from these facilities is the responsibility of the Australian Communications Authority (ACA), not the City of Swan.

The following is an extract from the City's Telecommunication (Mobile Phone) Facilities Policy regarding the perceived health effects of such facilities:

*"In respect to public health, the Australian Communications Authority (ACA) has advised that the weight of national and international opinion conclude that there is no substantiated evidence that living near a mobile phone tower causes adverse health effects. The ACA is the Commonwealth Government body responsible for regulating telecommunications and radio communications.*

*Council recognises the sensitivity associated with the perceived health effects of electromagnetic radiation from telecommunication facilities. However, Council does*

*not have the capability to make a determination on the impacts of telecommunication facilities on public health, or to monitor these impacts in the long term.*

*The study of electromagnetic radiation is highly complicated and technical and Council has to rely on the findings and advice of the ACA and the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) when considering the perceived health effects of proposed telecommunication facilities.*

*Therefore, on the basis of the current findings of the ACA and ARPANSA, Council is presently unable to regard the perceived health impacts of telecommunication facilities as a matter to be considered when determining planning applications. This approach is consistent with the WA Planning Commission's Planning Bulletin No. 46 and Final Draft Statement of Planning Policy regarding Telecommunications Infrastructure."*

Unightly; inappropriate height/scale; ugly; detract from surrounding and main street (James Street)

The proposed Telecommunication Tower is to stand approximately 18.94m in height which is the equivalent of a flood light poles used at local basketball or tennis courts.

The towers base has a 752mm diameter, and the top of the tower has a 520mm diameter. The upstand pole has a 140mm diameter.

The tower is proposed to be a soft grey in colour. However, the applicant is willing to paint the tower an alternative colour at Councils request.

Therefore although the tower is considered inconsistent with Guildford's Colonial urban architecture, the argument that it constitutes the above is not convincing. The above reasons for objections predominantly relate to aesthetic and physical appearance which are generally very subjective and therefore inappropriate to use as exclusive reasoning for planning decisions.

The above reasons also relate to scale and context which are considered less subjective, particularly as the City's Guildford Conservation Policy and Local Planning Policy – Guildford Conservation Precincts clearly explain the existing and future desirable development scale and context within its surroundings. Therefore in this regard the proposed Telecommunication Tower is considered to be a dominant structure which has the potential to impact the scale of the immediate surrounding residential properties. However, the Tower is not considered to be completely out of context in its proposed location, as Ross's Salvage Yards located within close proximity on the eastern side of Scott Street, and are approximately 7.8m in height and present a significant building mass. In this context a slimline tower is considered to have less visual impact on its surroundings, when compared to current structures in its vicinity.

Inappropriate location within a residential area

The argument that the proposed location is inappropriate is agreed on several grounds.

The location is inconsistent with the City's Telecommunication Policy development standard (d) which requires such a facility be setback 200m from any dwelling or residential zoned land. The property is zoned Residential Development and is surrounded by residential dwellings.

Furthermore, the subject lot and several adjacent lots have recently been the subject of an eighteen (18) residential lot Outline Development Plan. Council adopted this plan in April 2006. Although the plan is still awaiting final WAPC endorsement, Council's support of the residential use of the subject property is a reasonable indication that the land is likely to be used for such a use at some stage in the future. Thus, it would not be proper and orderly planning to support the Tower's proposed location with the knowledge that a residential use of the subject property has been supported by Council and is likely to be endorsed by the WAPC in the imminent future, as this would be inconsistent with Council's Policy.

However, notwithstanding the above the fact that a Telecommunication Facility currently exists and that the carrier has the lawful ability to modify the current facility, this fact has to be taken into consideration when determining the application.

#### Vegetation Removal

The applicant has advised that the proposal does not require removal or pruning of adjacent trees, as the proposed location is some distance from any trees.

The applicant has also advised that they are willing to consider an alternative route for the proposed power and telecommunication cables in order to mitigate the concerns raised from several submissions.

### **OPTIONS AND IMPLICATIONS**

Option 1: The Council may resolve to approve the proposed Upgrade and Relocation of the existing Telecommunication Facility on the basis that the facility will provide a service to people passing through or residing within Guildford. This option is not supported.

Implications: The existing facility located on the top of the sawdust hopper will be removed and a new tower, approximately 21.4m in height will be built in the rear south-east corner of the subject property.

Options 2: The Council may resolve to refuse the proposed Upgrade and Relocation of the existing Telecommunication Facility on the basis that it does not comply with several key requirements of the City's Telecommunications (Mobile Phone) Facilities Policy (POL-C-059). This option is supported.

Implications: The existing facility located on the top of the sawdust hopper will remain until the applicant finds a more suitable site within Guildford for a Telecommunication Facility. In this instance the applicant has the right of review to the State Administrative Tribunal.

The applicant has however advised that it would prefer to work with Council to find a more appropriate location for the facility within Guildford. If this process is not successful, the applicant is able under the *Telecommunication Act 1997* to develop a slimline tower in the existing hoppers exact location with a volume less than the existing hoppers.

## **CONCLUSION**

The application proposes to upgrade and relocate an existing Telecommunication Facility at Lot 6 (No.63-69) James Street Guildford. The application was advertised in accordance with the City's Telecommunications (Mobile Phone) Facilities (POL-C-059), and a total of forty-eight (48) submissions were received, of which thirty-eight (38) were objections and ten (10) were non-objections. Issues relating to health, amenity, appropriateness in proposed location and vegetation removal were generally the main grounds for objection. The proposal is inconsistent with several requirements of the City's Telecommunications (Mobile Phone) Facilities Policy (POL-C-059). Therefore it is recommended that application not be supported.

## **ATTACHMENTS**

Locality Plan (x2)

Detailed Site Plan

Site Plan (includes ODP 128 lot layout)

Elevation Plan

## **STRATEGIC IMPLICATIONS**

Nil

## **STATUTORY ENVIRONMENT**

Town Planning Scheme No. 9

Telecommunications Act 1997

## **FINANCIAL IMPLICATIONS**

Nil

## **RECOMMENDATION**

That the Council resolve to:

- 1) Refuse the proposed Upgrade and Relocation of the existing Telecommunication Facility at Lot 6 (No.63-69) James Street Guildford, for the following reasons:

- a. the proposed location of the telecommunication facility is wholly within a property zoned Residential Development under the City's Town Planning Scheme No.9 which is inconsistent with the City's Telecommunications (Mobile Phone) Facilities Policy (POL-C-059);
  - b. the proposed location is within 200m of a residential dwelling which is also inconsistent with the City's Telecommunications (Mobile Phone) Facilities Policy (POL-C-059);
- 2) Advise the applicant that Council acknowledges that the proposed Upgrade and Relocation of the existing Telecommunication Facility is considered a necessary facility in Guildford and an alternative location should be sought and submitted to Council that may be considered more favourably.
  - 3) Advise all those who lodged a submission of Council's decision accordingly.

**CARRIED**