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The General Manager
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Attention: Nick Keeler

SECTION 4.55(1A) APPLICATION FOR MODIFICATION OF DA2020/0619

CONSTRUCTION OF A MICROWAVE LINK DISH AND TOWER

12 RODBOROUGH ROAD, FRENCHS FOREST (LOT 2 DP855673)

1. INTRODUCTION

Dear Nick,

Reference is made to the development consent **DA2020/0619** granted on 7 August 2020 for the construction of a microwave link dish and tower at 12 Rodborough Road, Frenchs Forest (Lot 2 DP855673).

This statement has been prepared in support of a Section 4.55(1A) Application submitted to Northern Beaches Council (Council) which seeks to modify the development consent **DA2020/0619 (Appendix 1)** which granted consent for:

Construction of a microwave link dish and tower.

The purpose of this modification seeks to include an additional microwave link dish on the tower approved pursuant to **DA2020/0619**.

This application is made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act), on behalf of TX Australia Pty Ltd. The following supporting documentation has been provided as part of this application:

- Appendix 1 Development Consent **DA2020/0619**
- Appendix 2 Approved Architectural Plans
- Appendix 3 Amended Architectural Plans
- Appendix 4 EME Measurement Report

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2. SITE LOCATION AND CHARACTERISTICS

The Site is located north of Rodborough Road with vehicular and pedestrian access off Rodborough Road. The Site is rectangular in shape with an area of 5,268m². The setbacks for the Site are dedicated to car parking on a concrete driveway and include vegetation and a dominance of trees providing a vegetated appearance to the Site. Refer to **Figure 1** and **Figure 2** showing the cadastral map and aerial photograph of the Site, respectively.

The Site is occupied by a building that is octagonal in shape and the façade finish is dark blue/green complementing the Site's vegetated appearance (**Figure 3**).



Figure 1. Aerial Photo of the Site (Six Maps, 2021)

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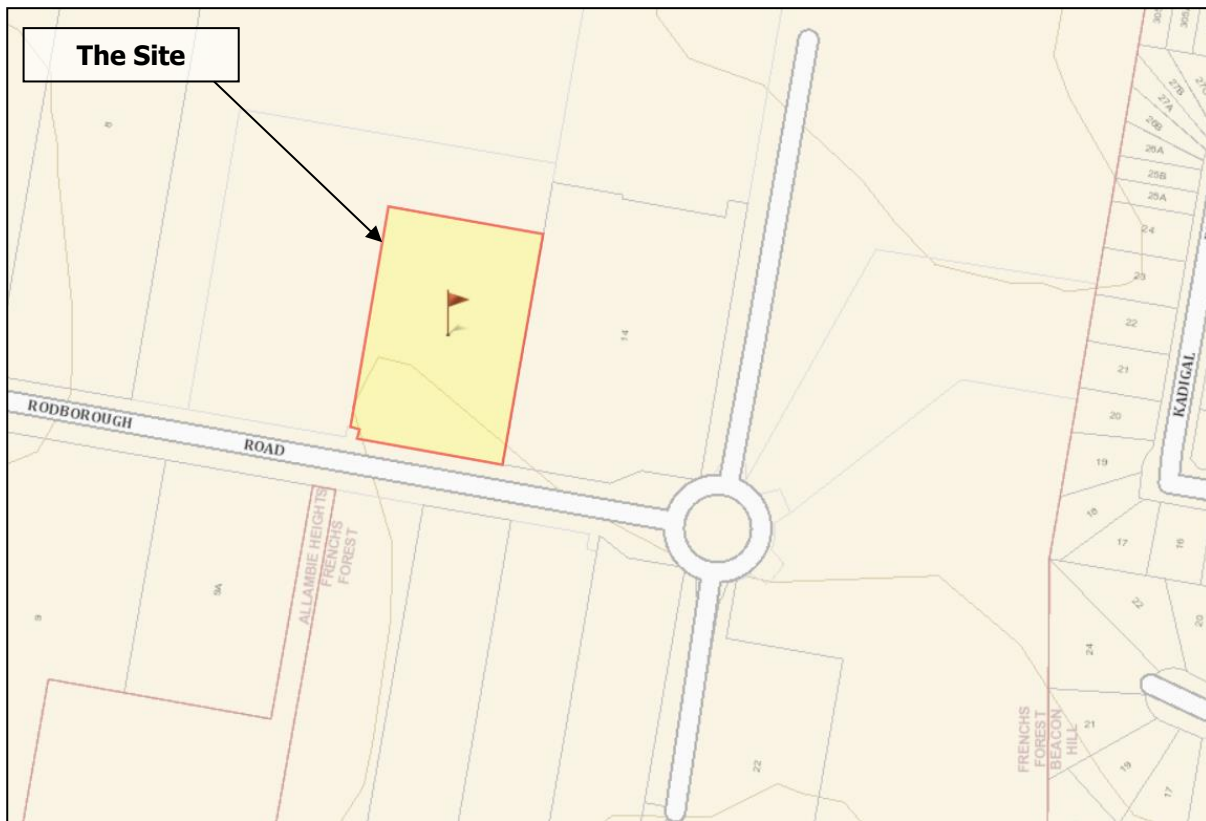


Figure 2. Cadastral of the Site (SIX Maps, 2021)

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Figure 3. View north from Rodborough Road, towards the existing building at the Site (Google Street View, 2021)

2.1 Site Context

The Site is directly surrounded by development on land to the north, west and east. To the south exists Rodborough Road. Surrounding land uses include a mix of office and light industrial.

The Site is centrally located within the B7 Business Park Zone identified within the *Warringah Local Environmental Plan 2011* (WLEP2011). The B7 Business Park Zone is bordered by the A38 Warringah Road to the north of the Site. South and East of the B7 Business Park Zone is the Low Density R2 Residential Zone. The Site is located approximately 215 metres from the R2 Low Density Residential Zone.

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3. PROPOSED MODIFICATIONS

The modification is sought to the Architectural Plans approved by Development Consent **DA2020/0619**.

The proposed modification seeks an additional microwave link dish to be affixed to the approved tower.

The Approved Architectural Plans have been provided at **Appendix 2** and the Proposed Architectural Plans at **Appendix 3**

The proposed modifications listed above are considered minor in nature and are unlikely to have significant impacts on the approved development.

Extracts of the approved architectural plans (**Figure 4**) and proposed architectural plans (**Figure 5**) clearly show the proposed modification.

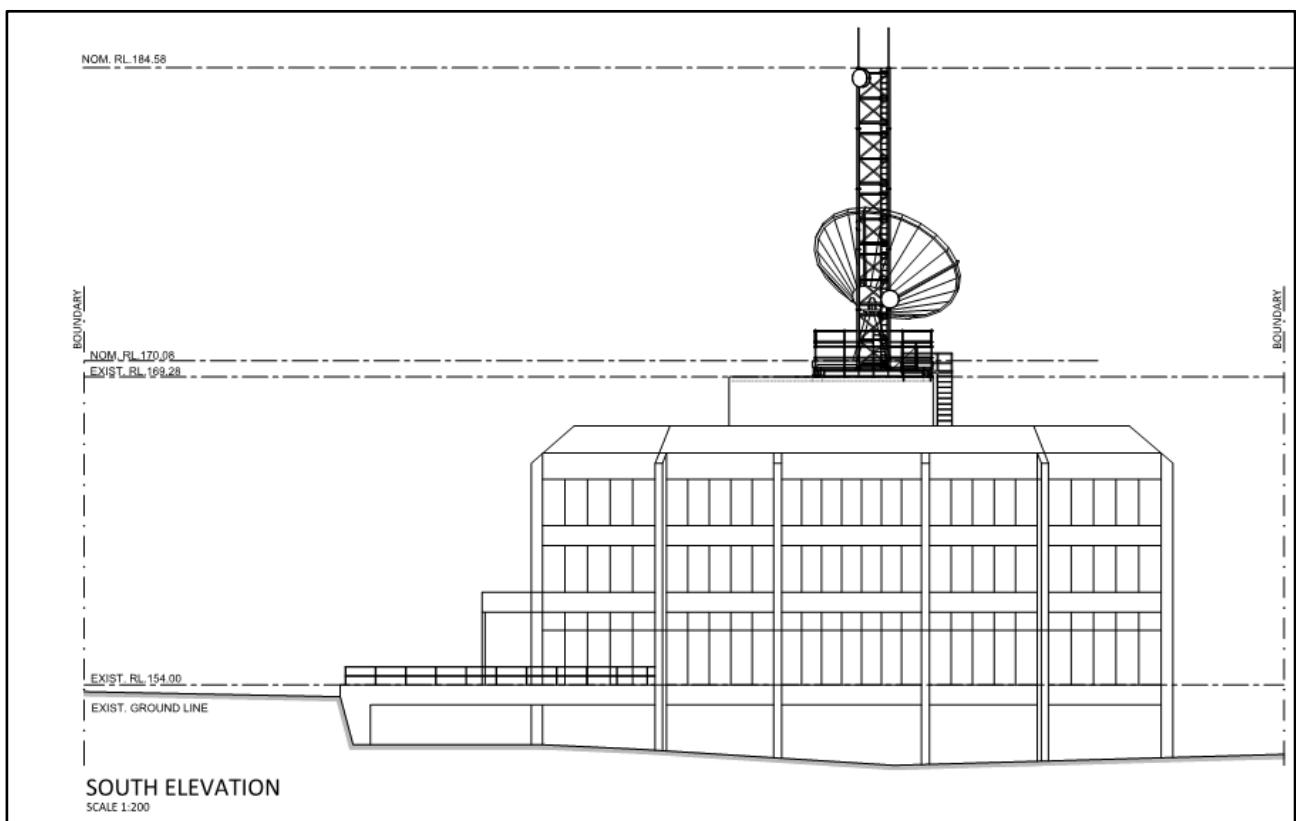


Figure 4. Approved South Elevation (Y Squared, 2021)

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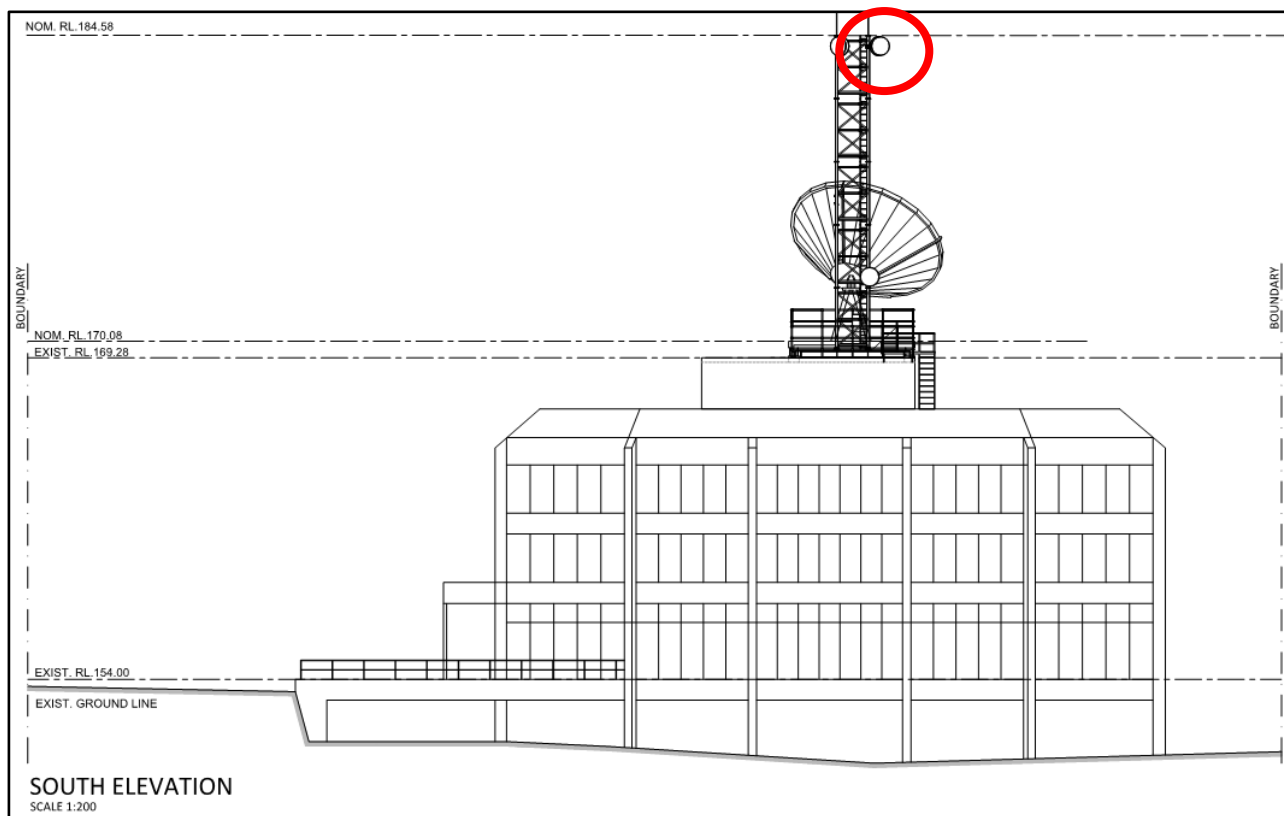


Figure 5. Proposed South Elevation (Y Squared, 2021)

To reflect the modification application to the relevant conditions, text to be deleted is indicated by 'striketrough' text to be inserted is indicated by **red text**.

The desired development outcome as outlined above requires the following modifications to Development Consent **DA2020/0619** (as previously amended):

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp

Drawing No.	Dated	Prepared by
790-00.50 Issue ± 2	09/04/2020- 25.05.2021	Y Squared
790-10.11 Issue ± 2	09/04/2020- 25.05.2021	Y Squared
790-20.01 Issue ± 2	09/04/2020- 25.05.2021	Y Squared

Reason: To show the proposed amendments on the Architectural Plans

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4. STATUTORY PLANNING FRAMEWORK

4.1 Environmental Planning and Assessment Act 1979

The EP&A Act is the principle planning and development legislation in New South Wales. Pursuant to Part 4, the proposal is local development. The modifications sought to the Development Consent **DA2020/0619** warrants consideration of the provisions of Section 4.55(1A) of the EP&A Act. The provisions of Clause 4.55(1A) of the EP&A Act provided in **Table 1** below requires consideration in this instance.

Table 1. Section 4.55(1A) Assessment	
Clause	Response
<i>(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—</i>	
<i>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</i>	Given the nature and extent of the changes proposed, the modifications sought would have no undue environmental impacts. Overall, there is no intensification resulting from the proposed modifications of the development being carried out. Section 6 of this statement considers the proposed developments impact on the immediate and surrounding environments. The 'substantially the same' test has been considered further following this table.
<i>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and</i>	The proposed modification would result in a minor material change and substantially the same built form as approved pursuant to DA2020/0619 .
<i>(c) it has notified the application in accordance with— (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</i>	Given that the proposed modifications are minor in nature, it is considered that public notification should not be required.
<i>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</i>	It is acknowledged that Council must consider any submissions that are received concerning the proposed modification.

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Table 1. Section 4.55(1A) Assessment	
Clause	Response
(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.	The proposed modifications are consistent with the matters referred to in section 4.15(1) of the EP&A Act. This is further described in the section below.

Section 4.55(1A) – Substantially the same

The scope of a maximum modification of a consent without constituting assessment as a standalone application can be analysed through the ambit of *Michael Standley & Associates Pty Ltd v North Sydney Council [2005] NSWLEC 358*, whereupon Commissioner Mason P. found in relation to modification of development consents that the word “modify” was given the ordinary meaning of “to alter without radical transformation”. Therefore, the extent to which a consent may be modified is that to which the consent, as modified, is as approved without radical transformation or alteration.

The development, as modified, is substantially the same development and will not result in a radical transformation of Development Consent **DA2020/0619**:

- The proposed modifications relate to minor alterations to the built form comprising 1 additional microwave link dish on the approved tower.

In light of the above, the proposal as amended, is not considered to result in a “radical transformation” of the consent, as currently approved, satisfying the radical transformation test pursuant to *Michael Standley & Associates Pty Ltd v North Sydney Council [2005] NSWLEC 358*.

Whilst the proposal seeks minor amendments to the amended Architectural Plans these are not considered to be material or essential elements of the approved development which would constitute a radical change to the ultimate development outcome of the site. This is further analysed in *Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280* which applies a quantitative and qualitative test to determine what qualifies a development as being “substantially the same”.

Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280 provides that a comparison of the development as approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the approved development. The comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

Therefore, the proposal, as amended, will be substantially the same development as approved, and satisfies the requirements for the application to be assessed and approved pursuant to Section 4.55(1A) of the EP&A Act.

Section 4.55(1A) – Reasons given by the consent authority for the grant of the consent

The proposed modifications do not relate to reasons given by the consent authority for the granting of consent.

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4.2 Warringah Local Environmental Plan 2011

The *Warringah Local Environmental Plan 2011* (WLEP2011) is the primary environmental planning instrument that applies to the site.

The relevant provisions of WLEP2011 as they relate to the Site are considered below:

4.5.1 Zoning and Permissibility

The Site is in the B7 Business Park Zone which permits with consent uses such as office premises. The B7 Business Park Land Use Table under the WLEP2011 is provided below:

Zone B7 Business Park

1 Objectives of zone

- *To provide a range of office and light industrial uses.*
- *To encourage employment opportunities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.*

2 Permitted without consent

Nil

3 Permitted with consent

Centre-based child care facilities; Garden centres; Hardware and building supplies; Light industries; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Respite day care centres; Roads; Self-storage units; Take away food and drink premises; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 4

4 Prohibited

Advertising structures; Agriculture; Air transport facilities; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Boat sheds; Business premises; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Highway service centres; Home-based child care; Home businesses; Home occupations; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Marinas; Mooring pens; Moorings; Open cut mining; Places of public worship; Pond-based aquaculture; Port facilities; Recreation facilities (major); Registered clubs; Research stations; Residential accommodation; Restricted premises; Retail premises; Rural industries; Service stations; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Waste or resource management facilities; Water recreation structures; Wharf or boating facilities; Wholesale supplies.

The proposed microwave link dish is considered to meet the objectives of the zone ensuring the specific function of the office can be delivered. NPC require the installation of the microwave link dish to support the provision of televised services and provide emergency input to the transmitters of Channel Nine and Channel Seven. By ensuring NPC Media can uplink televised channels from the Site encourages employment opportunities. By ensuring the microwave link dish is on the roof no removal of vegetation including trees is required.

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The microwave link dish does not drastically remove from the architectural appearance of the building providing a functional ancillary purpose to the Site. Further, the microwave link dish located on the roof is not immediately visible from the streetscape diminishing its impact on the visual quality of surrounding development. The Site as shown in **Figure 6**, is centrally located within the B7 Business Zone bordered by Warringah Road to the north. The Site is considered a considerable distance from the R2 Low Density Zones highlighted by the distances shown in **Figure 6**.

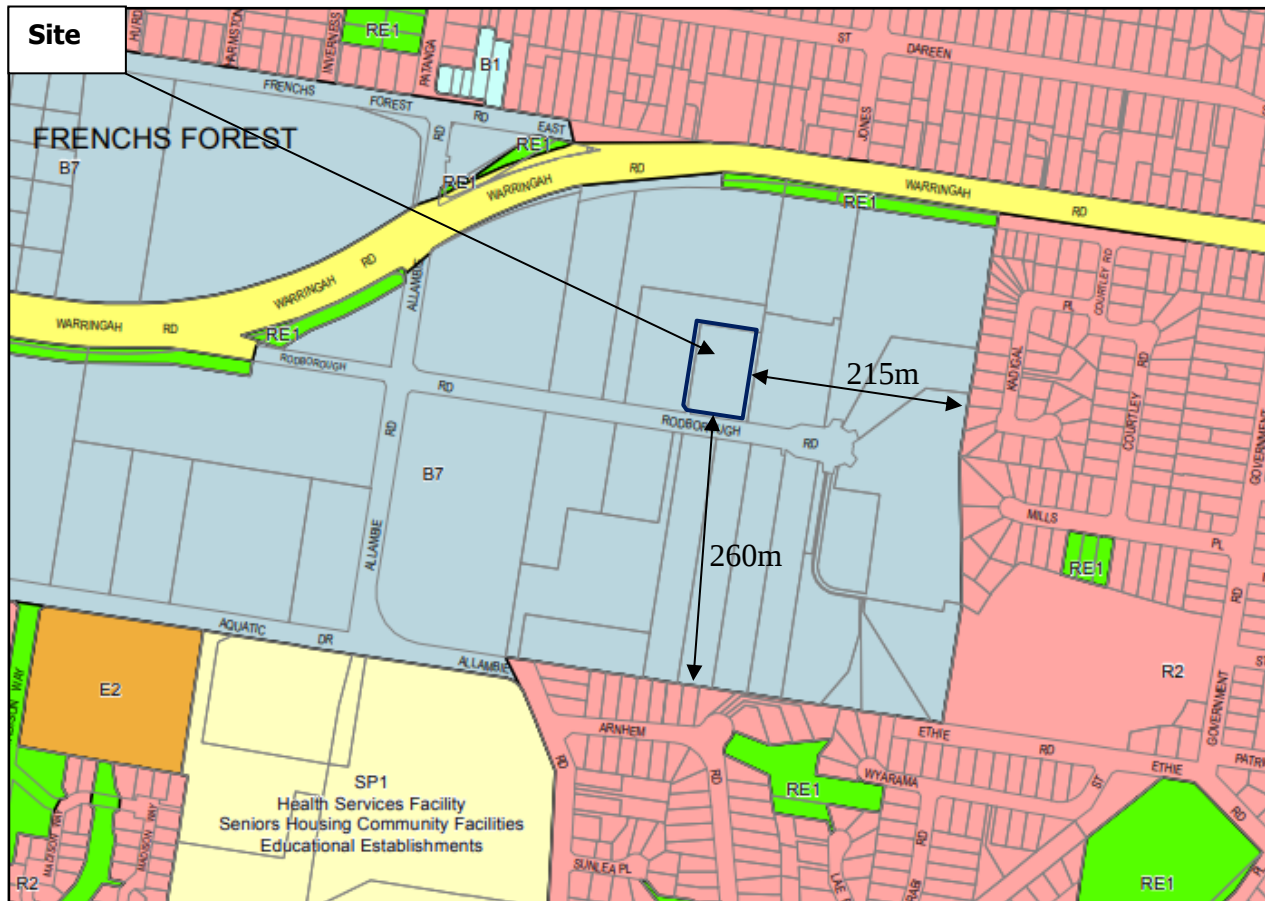


Figure 6. WLEP2011 Zoning Map (NSW Legislation, 2011)

Table 2 outlines the developments consistency and compliance with the relevant development standards and controls under WLEP2011.

Table 2. Development Standards	
Clause	Comment
Clause 4.1 – Minimum Lot Size	The minimum lot size is 4,000sqm as per the WLEP2011 Lot Size Map – Sheet LSZ_008A. The proposal does not seek to alter the lot size for the Site.
Clause 4.3 – Height of Buildings	WLEP2011 Height of Buildings Map – Sheet HOB_008A indicates no maximum building height applies to the Site. The relevant Height of Building Map is below in Figure 7 .
Clause 4.4 – Floor Space Ratio	WLEP2011 does not adopt any Floor Space Ratio controls.
Clause 4.6 – Exceptions to development standards	There is no Clause 4.6 exception to development standard request required for the proposed works.

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Clause 5.10 – Heritage	The Site is not a Heritage Item, Landscape Item or in a Conservation or Landscape Conservation Area identified in Schedule 5 of WLEP2011. This Site is not within the vicinity of a Heritage Item identified in Schedule 5 of WLEP2011.
Clause 6.1 Acid sulfate soils	The Site is not in a designated Acid Sulfate Soil Zone as per the WLEP2011 Acid Sulfate Soils Map – Sheet ASS_008A.
Clause 6.2 – Earthworks	No earthworks are proposed as works are to the roof only.
Clause 6.3 – Flood Planning	The Clause applies to land at or below the flood planning level. The Northern Beaches online Planning Maps confirm the Site is not at the flood planning level.
Clause 6.4 – Development on sloping land	The WLEP 2011 Landslip Risk Map – Sheet LSR_008A confirms that approximately 75% of the Site is in Area B – Flanking Slopes 5 degrees to 25 degrees. The rear 25% of the Site is in Area A – Slope <5 degrees.
Clause 6.5 – Coastline hazards	Not applicable – the Site is not located on the coast therefore not in an area of wave impact or reduced foundation capacity.



Figure 7. WLEP 2011 HOB Map - HOB_008A (NSW Legislation, 2011)

5. NON-STATUTORY PLANNING FRAMEWORK

5.1 Warringah Development Control Plan 2011

Warringah Development Control Plan 2011 (WDCP2011) supplements the WLEP2011 and provides more detailed provisions to guide development. The proposed modifications do not affect any of the WDCP2011 controls.

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6. LIKELY IMPACTS OF DEVELOPMENT

6.1 Built Form

The proposed built form would not alter the existing approved built form. An additional microwave link dish will be visible but will not have any significant impact how the building is viewed from the streetscape.

6.2 Safety and Security

The proposed additional microwave link dish would not have any impacts on safety in relation to electromagnetic radiation. The Electromagnetic Energy (EME) Measurement Report prepared by Kordia (**Appendix 4**) measured values were lower than the predicted EME levels provided as part of the previous DA. The proposed development is not considered to have any safety impacts for surrounding development.

6.3 Suitability of the Site

Part 1 of Section 4.15 'Evaluation' in the EP&A Act 1979 outlines matters for consideration in determining a development application. A consent authority is to take into consideration the suitability of the Site for development as per (1)(c) of Section 4.15.

The Site is considered highly accommodating for the installation of the microwave link dish as the Site is in a B7 Business Park Zone, is not a Heritage Item or in a Conservation Area, and the Site is not close to a Conservation Area or Heritage Item. Further the Site is approximately 215m from the nearest residential zone and not near a public recreational area. The Site is not restricted to WLEP2011 maximum building heights.

6.4 Submissions

Should any submissions be received during the advertising period, they will be addressed by the applicant accordingly.

6.3 Public Interest

Part 1 of Section 4.15 'Evaluation' in the EP&A Act 1979 outlines matters for consideration in determining a development application. A consent authority is to take into consideration the public interest as required by (1)(e) of Section 4.15.

The installation of the microwave link dish would ensure the subject building can be utilised productively as the key location transmitting televised services from the Site without any visual adverse impact to residential occupants due to the Site's central location within a B7 Business Park. Further, the Site benefits from not being near to heritage items, conservation areas or public recreational spaces.

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7. CONCLUSION

The proposal has been prepared after taking into consideration the following key issues:

- Previously approved development and reasons for granting of consent;
- The context of the site and locality;
- The relevant heads of consideration under Section 4.55(1A) of the EP&A Act; and
- The aims, objectives and provisions of the relevant statutory and non-statutory planning instruments.

Given the nature and extent of the changes proposed, the modifications sought would have no undue environmental impacts. Overall, there is no intensification of the development resulting from the proposed modification.

In light of the above, the modification to Development Consent **DA2020/0619** is considered worthy of support by Northern Beaches Council.

Should you require additional information, please do not hesitate to contact the undersigned.

Yours faithfully,



Chris Wilson
Managing Director
Willowtree Planning Pty Ltd
ACN 146 035 707

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Appendix 1 Development Consent DA/487/2019 and DA/487/2019/A

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Appendix 2 Approved Architectural Plans

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Appendix 3 Proposed Architectural Plans

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Appendix 4 EME Measurement Report