

6 August 2013

Woombah Tower Action Group

MACLEAN NSW 2463

By email: woombah.tower@gmail.com

Proposed Woombah NBN tower – Preliminary advice on lawfulness of the planning process

1. We refer to our previous phone conversations and the emails that you sent to us on 1st to 4th August 2013. We have now reviewed the emails that you sent to us and the relevant planning law, and provide you with the following preliminary advice.
2. We are of the opinion that the proposed tower for Woombah is NOT complying development, despite the claims of NBN Co and the suggestion of the Department of Planning.
3. The reason for this is as follows:
4. Clause 116A of the *State Environmental Planning Policy (Infrastructure) 2007* (the SEPP) states that, as well as falling within the terms of Part 2 of Schedule 3A to the SEPP, to be complying development, development for the purpose of a telecommunications facility must comply with the requirements of clause 20B.
5. Clause 20B(2)(b) of the SEPP states that the development must “*be permissible, with consent, in the land use zone in which it is carried out*”.
6. We are instructed that the proposed Woombah tower would be located within the RU2 zone under Clarence Valley LEP, at 97 West St, Woombah. This RU2 zone states the following land uses are permissible (see the Land Use Table under the Clarence Valley LEP at <http://www.legislation.nsw.gov.au/maintop/view/inforce/epi+701+2011+cd+0+N>):

“2 Permitted without consent

Environmental protection works; Extensive agriculture; Forestry; Home-based child care; Home businesses; Home industries; Home occupations; Home occupations (sex services); Horticulture; Viticulture

3 Permitted with consent

Airstrips; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Boat sheds; Camping grounds; Caravan parks; Cellar door premises; Cemeteries; Child care centres; Community facilities; Correctional centres; Crematoria; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Environmental facilities; Farm buildings; Farm stay accommodation; Flood mitigation works; Health consulting rooms; Helipads; Intensive livestock agriculture; Intensive plant agriculture; Landscaping material supplies; Neighbourhood shops; Open cut mining; Plant nurseries; Recreation areas; Recreation facilities (outdoor); Respite day care centres; Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Signage; Veterinary hospitals; Water recreation structures”

7. Nowhere is there any reference to telecommunications facilities. They are therefore a prohibited use within the zone and the proposed tower is therefore unable to comply with cl 20B.
8. In this regard, cl 115 of the SEPP allows NBN Co to nevertheless seek development consent from Council for the proposed tower. However, in our view, it cannot be carried out as complying development.
9. This should be drawn to the attention of Clarence Valley Council, and the company, and any purported principal certifying authority that NBN Co is seeking to use for its alleged 'complying development' as soon as possible.
10. If NBN Co attempt to build this as complying development, you may be able to seek an injunction in the Land and Environment Court.
11. We trust this information is of assistance. If you would like to pursue this further, we may be able to assist with a referral to an appropriate barrister and/or solicitor.

Yours sincerely,
EDO NSW



Ian Ratcliff
Senior Solicitor

Our Ref: