

## Committee of the Whole Report

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<b>Report Number:</b>	<b>PLAN2021-059</b>
<b>Meeting Date:</b>	November 2, 2021
<b>Title:</b>	<b>Telecommunications Facility Concurrence Application – Xplornet Communications</b>
<b>Description:</b>	An application to issue a concurrence for a proposed 45.0 metre self-supported Telecommunications Facility by FB Connect on behalf of Xplornet Communications at 1060 Sandy Hook Road, Manvers (William and Anita Durant)
<b>Author and Title:</b>	<b>Ian Walker, Planning Officer – Large Developments</b>

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### Recommendations:

**That** Report PLAN2021-059, **Part of Lot 18, Concession 2, Geographic Township of Manvers, William and Anita Durant – Application D44-2021-005**, be received;

**That** the 45.0 metre self-supported telecommunication facility proposed by FB Connect on behalf of Xplornet Communications, to be sited on property at 1060 Sandy Hook Road and generally outlined in Appendices A to F to Report PLAN2021-059, not be supported by Council;

**That** the Director of Development Services be authorized to advise Innovation, Science and Economic Development (ISED) Canada, the applicant, and all interested parties of Council's decision; and

**That** this recommendation be brought forward to Council for consideration at the next Regular Council Meeting.

**(Acting) Department Head:** \_\_\_\_\_

**Financial/Legal/HR/Other:** \_\_\_\_\_

**Chief Administrative Officer:** \_\_\_\_\_

## Background:

FB Connect has submitted an application on behalf of Xplornet Communications to permit a self-supported telecommunication facility with a height of 45.0 metres (148 feet) on a rural property located at 1060 Sandy Hook Road, to the east of Pontypool. See Appendix 'A'. A site compound with an area of 225 square metres (15 metres by 15 metres) will house all electrical components. For access to the compound, Xplornet Communications will utilize the existing second driveway from Sandy Hook Road. See Appendices 'B' and 'C'.

Owner:	William and Anita Durant
Agent:	FB Connect on behalf of Xplornet Communications
Legal Description:	Part of Lot 18, Concession 2, geographic Township of Manvers
Official Plan:	'Natural Core Area' on Schedule '2' of the Oak Ridges Moraine Official Plan
Zoning:	'Oak Ridges Moraine Core Area (ORMCA) Zone' and 'Oak Ridges Moraine Environmental Protection (ORMEP) Zone' on Schedule 'A' of the Oak Ridges Moraine Zoning By-law 2005-133
Site Size:	225.0 square metres consisting of a 15.0 metre by 15.0 metre compound, and an existing site access lane
Site Servicing:	A dedicated electrical connection is required to service the telecommunication facility
Existing Uses:	Portions of the property are used for residential uses, and a portion includes environmental (natural) features
Adjacent Uses:	North: Forest with Agricultural East: Managed Forest; Highway 115; Rural Residential South: Highway 115; Sandaraska Road; Campground (Sandaraska Park) West: Sandy Hook Road; Forest with Agricultural

## Rationale:

The telecommunications industry is regulated by the federal government through the Radiocommunication Act, which is primarily administered by Innovation, Science and

Economic Development (ISED) Canada (formerly Industry Canada) and Health Canada. As telecommunications systems are regulated by the federal government, they are therefore not subject to the requirements of Planning Act documents such as official plans or zoning by-laws. ISED Canada considers the local 'Land Use Authorities' (LUAs) to have the best knowledge of land uses in an area. Therefore, ISED Canada encourages the development of protocols by the local municipalities (LUAs) to ensure that a clear process is established for the consideration of new telecommunications facilities within the community. Where a municipality has adopted a telecommunications policy, the applicant must receive a concurrence from the municipality that the proposal complies with their policy, before ISED Canada will issue an approval for the facility.

On June 15, 2021, Council adopted updates to the current telecommunications policy (CP2018-014 Telecommunications and Antenna System Siting Policy) relating to the installation of new telecommunication towers within the City of Kawartha Lakes. The intent of CP2018-014 is to establish a process and provide a clear set of criteria for the consideration of new telecommunications facilities within the community. In accordance with CP2018-014, all applications must first receive a concurrence from Council (subject to any necessary conditions) before a proponent can seek an approval from ISED Canada. The recent amendments to policy CP2018-014 included a number of enhancements meant to support increased public notification (by requiring a larger circulation radius), and streamlined processing of non-complex applications. As a condition of the concurrence for all uncontested applications, the proponent and the landowner must enter into a Telecommunication Facility Development Agreement with the City. The Agreement ensures that a tower will be properly decommissioned and removed from the property when it is no longer required.

Council also approved an update that grants authority to the Director of Development Services to sign letters of concurrence where applications are not contested by the public or an agency and they meet all of our policy objectives. Where this test is not met, staff are required to bring a report forward to Council for consideration. Since this application does not meet the City's telecommunications policy objectives, staff are bringing this report to Council for consideration.

Through the processing of a Preconsultation application, staff advised the proponent that the proposed tower did not comply with the locational criteria required by the Council policy (See Appendix F). Staff provided the following recommendation:

- The proposed tower location is currently placed in the natural heritage feature (Significant Woodlands). In accordance with the Oak Ridges Moraine Conservation Plan (ORMCP), new infrastructure would not be supported within the natural heritage feature. As there is an existing development footprint and clearing on this property, the proposed tower should be moved to the already disturbed portion of this property, with access to be provided by the existing

entrance. Staff could then be in a position to support a proposed tower on this property.

Where an application is contested (including where it does not comply with the locational criteria previously established by Council), Council must provide direction to staff on processing of the application through a Council Resolution. As such, staff have prepared this report with the staff recommendation to not support the application. Two alternatives are presented for Council's consideration, based on the following:

- Option 1 – Council provides direction for the proponent to seek an alternative location on the same property, in a location which can be supported by the locational criteria outlined in CP2018-014; or
- Option 2 – Council supports the concurrence request, subject to entering into a Telecommunications Facility Development Agreement with the City.

The applicant has submitted the following reports and information in support of the application, which have been circulated to various City Departments and commenting agencies for review:

1. Planning Justification Report, prepared by FB Connect, dated July 12, 2021. The report discusses and assesses the proposed telecommunication tower in context of the federal legislation and the City's Telecommunications Policy, including photo renderings of the proposed tower;
2. Site Plan, prepared by Alex Marton Limited Ontario Land Surveyors, dated March 3, 2021;
3. Grade Control and Drainage Plan, prepared by Alex Marton Limited Ontario Land Surveyors, dated July 20, 2021;
4. 45.72m (150') Tower Profile, prepared by Trylon, dated August 2, 2020;
5. Entrance Permit Review Confirmation Letter, prepared by City of Kawartha Lakes – Public Works Department, dated September 17, 2021;
6. Public Consultation Summary letter dated August 27, 2021.

### **Applicable Provincial Policies:**

While telecommunication systems are a federally-led initiative, the Province also recognizes the importance of telecommunications infrastructure and encourages further systems development to meet current and projected service demands in its policy documents, including the Provincial Policy Statement, 2020 (PPS); A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019 and including Amendment 1, 2020 (Growth Plan); and the Oak Ridges Moraine Conservation Plan, 2017 (ORMCP).

Where there is a conflict between the policies of the ORMCP and the PPS and/or Growth Plan, the policies of the ORMCP prevail. The ORMCP provides for telecommunications infrastructure, but directs that new infrastructure be considered subject to Section 41.(3) as follows: 'An application for the development of infrastructure in or on land in a Natural Core Area shall not be approved unless the applicant demonstrates that' 41.(2)(a) the need for the project has been demonstrated and there is no reasonable alternative.

Staff agree that the proponent has demonstrated the a need for a facility in this area; however, the proposed tower and associated site works are not located outside of all natural features and their respective buffers, and the applicant has not demonstrated that there is no reasonable alternative in accordance with Section 41.(2)(a) of the ORMCP.

### **Official Plan Conformity:**

The property is designated 'Oak Ridges Moraine OPA Schedule G' on Schedule 'A-1' of the City of Kawartha Lakes Official Plan; and is designated 'Natural Core Area' on Schedule '2' of the Oak Ridges Moraine Official Plan (ORM OP), which is considered a subset of the City's Official Plan. While telecommunication systems are not subject to the requirements of the Official Plan, Section 28.10 of the Official Plan supports the erection of new telecommunication towers, as long as they are located outside of natural features and their respective buffers, and provided that there is a demonstrated need. The designation permits 'transportation, infrastructure, and utilities as described in Section 41 of the ORMCP, but only if the need for the project has been demonstrated and there is no reasonable alternative'.

Again, Staff agree that the proponent has demonstrated the need for a facility in this area; however, the proposed tower and associated site works are not located outside of all natural features and their respective buffers, and the applicant has not demonstrated that there is no reasonable alternative in accordance with Section 41.(2)(a) of the ORMCP.

### **Zoning By-law Compliance:**

The subject land is zoned 'Oak Ridges Moraine Core Area (ORMCA) Zone' and 'Oak Ridges Moraine Environmental Protection (ORMEP) Zone' in the Oak Ridges Moraine Zoning By-law 2005-133 (the 'By-law'). The proposed tower is in the 'ORMCA' zone. While telecommunication systems are not subject to the requirements of the Zoning By-law, Section 6.6 a) vi) of the By-law prohibits telecommunications lines and facilities, including broadcasting towers in the 'ORMCA' zone.

## **Other Alternatives Considered:**

**Option 1:** Support moving the tower to a different location on the subject property which complies with all of the tower siting criteria. In this instance, the concurrence process may be completed as an uncontested application and require no further direction from Council. The draft Council Resolution reads as follows:

**That** Report PLAN2021-059, **Part of Lot 18, Concession 2, Geographic Township of Manvers, William and Anita Durant – Application D44-2021-005**, be received; and

**That** PLAN2021-059 respecting Application D44-2021-005 be referred back to staff to address the outstanding locational issues and for further review and processing until such time that all comments and concerns have been addressed.

**Option 2:** Support the tower in the existing location, subject to a Telecommunications Facility Development Agreement (the 'Agreement'). In this instance, staff would be directed to prepare the Agreement for signatures by the Proponent, the Owner, and the Mayor and Clerk. The draft Council Resolution reads as follows:

**That** Report PLAN2021-059, **Part of Lot 18, Concession 2, Geographic Township of Manvers, William and Anita Durant – Application D44-2021-005**, be received;

**That** the 45.0 metre self-supported telecommunication facility proposed by FB Connect on behalf of Xplornet Communications, to be sited on property at 1060 Sandy Hook Road and generally outlined in Appendices A to F to Report PLAN2021-059, be supported by Council, conditional upon the applicant entering into a Telecommunication Facility Development Agreement with the City;

**That** the Director of Development Services be authorized to advise Innovation, Science and Economic Development (ISED) Canada, the applicant, and all interested parties of Council's decision;

**That** the Mayor and Clerk be authorized to execute any documents and agreements required by the concurrence of this application; and

**That** this recommendation be brought forward to Council for consideration at the next Regular Council Meeting.

## **Alignment to Strategic Priorities**

The Council Adopted Strategic Plan identifies these Strategic Priorities:

1. Healthy Environment
2. An Exceptional Quality of Life
3. A Vibrant and Growing Economy
4. Good Government

This application aligns with the Good Government priority by increasing internet services available throughout Kawartha Lakes. It may have a negative impact on the Healthy Environment priority by supporting further encroachments into an existing natural heritage feature.

## **Financial/Operation Impacts:**

There are no financial considerations for the City.

## **Servicing Implications:**

There are no servicing considerations for the City.

## **Consultations:**

### **Public Comments**

The City's Telecommunications Policy requires that the applicant conduct the public consultation and information process as prescribed by ISED Canada. The ISED Canada standards require notification through a local newspaper (when the tower is 30.0 metres or greater in height), and a mailout to all landowners within a minimum notification radius which is the greater of:

- a) 120 metres from the property boundary; or
- b) Three times the height of the tower (45 metres), taken from the base of the tower or guyed wires (135 metres).

Based on the above criteria, the minimum mailout radius for this proposal is to all landowners within 120 metres of the host property boundary. In accordance with the ISED Canada requirements, a notice was also placed in the local newspapers as follows:

Kawartha Lakes This Week and the Kawartha Promotor on July 15, 2021, with commenting up to August 16, 2021.

The applicant provided a letter dated August 27, 2021 for the City's review, noting that no comments or concerns were received. A copy of the consultation summary is contained in Appendix 'E' to this report.

### **Agency Review Comments**

The proposal was first assessed and circulated to all relevant agencies and City Departments through the City's Preconsultation process, to identify a full list of submission requirements and initial comments for consideration. As a result, the application was circulated to only the relevant agencies and City Departments, which may have an interest in the application. The following comments have been received to date:

October 14, 2021	The Part 8 Sewage System Program (Building and Septic Division) advised they have no concerns.
October 14, 2021	The Economic Development Division advised they have no comments further to those provided through Preconsultation as follows: 'No concerns with this application outside those already noted by Planning preliminary comments, except to request that the tower be located such that a minimal amount of forested land is removed from production'.
October 15, 2021	The Engineering and Corporate Assets Department advised they have no comments. In addition, they note all utility work within the City right of way requires Municipal Consent from Engineering & Corporate Assets and a Road Occupancy Permit Application from the Public Works Department.
October 20, 2021	The Chief Building Official (Building and Septic Division) advised they have no concerns.
October 20, 2021	Otonabee Conservation advised they have no comment.

### **Development Services – Planning Division Comments:**

#### **Compliance with Telecommunication Tower Siting Criteria**

Staff have reviewed the telecommunication facility application and concludes that the proposal **does not comply** with the siting criteria in the following manner:

- The proposed tower is located within a 'Significant Woodland', as mapped in the Oak Ridges Moraine Conservation Plan (ORMCP) features mapping. The



proposed tower does not comply with the necessary setbacks to all environmental features.

Staff concludes that the proposal complies with the siting criteria in the following manner:

- The applicant has investigated the possibility of co-locating other existing telecommunication towers. Since there are few towers in the area, and no other towers within a 500 metre radius, co-location is not an option and a new tower is necessary for technical reasons. The proposed tower structure is designed to allow other carriers to co-locate in the future, should the need arise. Staff is satisfied that an additional tower is necessary to provide service for the area.
- The proposed tower fulfills all of the necessary setbacks from local roads, property lines and residential areas.
- While the tower will be visible in the skyline, the self-supported design should not make the tower obtrusive to the view of the area. Appendices 'B' and 'C' contain a proposed tower and compound plan. The views of the tower are expected to be similar to those contained in Figure 3 in the Planning Justification Report. See Appendix 'D'.

From Staff's perspective, the proposed telecommunication facility fulfills some of the locational requirements of the City's Telecommunications Policy, but does not fulfill the policy's environmental siting criteria.

### **Tower Lighting**

With regard to the lighting, this tower may require painted striping or lighting; however, it is not anticipated that either item will be required by Transport Canada. Transport Canada provides any painting and/or lighting requirements for navigation and/or safety purposes. Staff advise that should any night lighting be required; it should not include white flashing strobe lights.

### **Site Development Agreement**

Staff would require that, should Council support concurrence with this proposal or any modified proposal on this property, the telecommunications facility should be subject to a limited Telecommunications Facility Development Agreement with the City. This Agreement would secure an approved site plan, lot grading and drainage plan, securities for entrance works and landscaping (when necessary), and landscaping details as required. The agreement would also include provisions for the removal of the telecommunication facility once it is no longer required or being used. Staff views this agreement as serving more of an administrative function, and therefore does not recommend registering the agreement against title.

## Other Considerations

The plans received, circulated and reviewed by the City (Site Plan dated March 3, 2021; Grade Control and Drainage Plan dated July 20, 2021) do not match the Site Plan version supported by the Ministry of Transportation Ontario (MTO) for the issuance of their Building and Land Use Permit (Revision 1, dated September 17, 2021) which was received by email on October 21, 2021. The location of the proposed tower compound has been relocated based on the MTO's request to comply with their setback to Highway 115.

## Conclusion:

In consideration of the comments and issues contained in this report, Staff respectfully recommend that the proposed Telecommunications Facility Concurrence Application be referred to Council for **Refusal**.

## Attachments:

The following attached documents may include scanned images of appendices, maps, and photographs. If you require an alternative format, please call Ian Walker, Planning Officer – Large Developments, (705) 324-9411 extension 1368.

### Appendix A – Location Map



PLAN2021-059  
Appendix A.pdf

### Appendix B – Proposed Site Plan with Tower Drawings – dated March 3, 2021



PLAN2021-059  
Appendix B.pdf

### Appendix C – Proposed Site Plan with Tower Drawings – revised September 17, 2021



PLAN2021-059  
Appendix C.pdf

## Appendix D – Planning Justification Report



PLAN2021-059  
Appendix D.pdf

## Appendix E – Summary of Public Consultation



PLAN2021-059  
Appendix E.pdf

## Appendix F – Final Preconsultation Report



PLAN2021-059  
Appendix F.pdf

**(Acting) Department Head email:** [rholy@kawarthalakes.ca](mailto:rholy@kawarthalakes.ca)

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**Department File:** D44-2021-005