

# **CONFIRMED MINUTES**

**FOR THE  
GREATER SHEPPARTON CITY COUNCIL**

## **DEVELOPMENT HEARINGS PANEL**

**Meeting No. 4/2013**

**HELD ON  
THURSDAY 28 MARCH 2013  
AT 10.03AM**

**AT THE COUNCIL BOARD ROOM  
90 WELSFORD STREET**

**CHAIR  
Johann Rajaratnam**

**COMMITTEE MEMBERS PRESENT: Johann Rajaratnam, Cr Michael Polan, Braydon  
Aitken, Jonathan Griffin, Michael MacDonagh**

**OFFICERS: Andrew Dainton – Principal Statutory Planner  
Steve Bugoss – Timer and Minute Taker**

**1. ACKNOWLEDGEMENT**

“We the Greater Shepparton City Council, begin today’s meeting by acknowledging the traditional owners of the land which now comprises Greater Shepparton. We pay respect to their tribal elders, we celebrate their continuing culture, and we acknowledge the memory of their ancestors”.

**2. APOLOGIES**

None

**3. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

No minutes were confirmed and have been held over to the next meeting, as there were not two committee members that attended those meeting’s present at today’s meeting.

**4. DECLARATIONS OF CONFLICTS OF INTEREST**

None

**5. MATTERS FOR CONSIDERATION**

One item listed for consideration.

**6. LATE REPORTS**

None

**7. NEXT MEETING**

11 April 2013

## INDEX

<u>Application No.</u>	<u>Subject Address:</u>	<u>Proposal:</u>	<u>Page No.</u>
2012-364	260 Central Avenue, Kialla	40metre high telecommunications tower and associated equipment & antenna	3

## Application Details:

Responsible Officer:	Andrew Dainton
Application Number:	2012-364
Applicants Name:	Ericsson Australia Pty Ltd
Date Application Received:	5 November 2012
Statutory Days:	21 days
Land/Address:	260 Central Kialla Road KIALLA VIC 3631
Zoning and Overlays:	Farming Zone Land Subject to Inundation Overlay Floodway Overlay
Why is a permit required (include Permit Triggers):	35.07-4 – Buildings and works in the Farming Zone; and 52.19-2 – installation of a telecommunications facility.
Are there any Restrictive Covenants on the title?	No – there is a section 173 agreement relating to no further subdivision of the land

## Proposal

The application for a planning permit proposes the installation of a Telecommunications facility in the Farming Zone at the subject address. An application was required for buildings and works in the Farming Zone and under the particular provision for the installation of telecommunications facilities.

The facility is to comprise of the following:

- Installation of a new 40 metre high monopole tower;
- 3 panel antennas;
- 4 parabolic antennas;
- 2 outdoor cabinets on steel platform 1 metre above the ground level; and
- Ancillary equipment associated with operation of facility, including remote radio units, canister, cable trays, cabling, safe access methods, bird proofing, earthing, electrical works and air-conditioning equipment.

### The first application

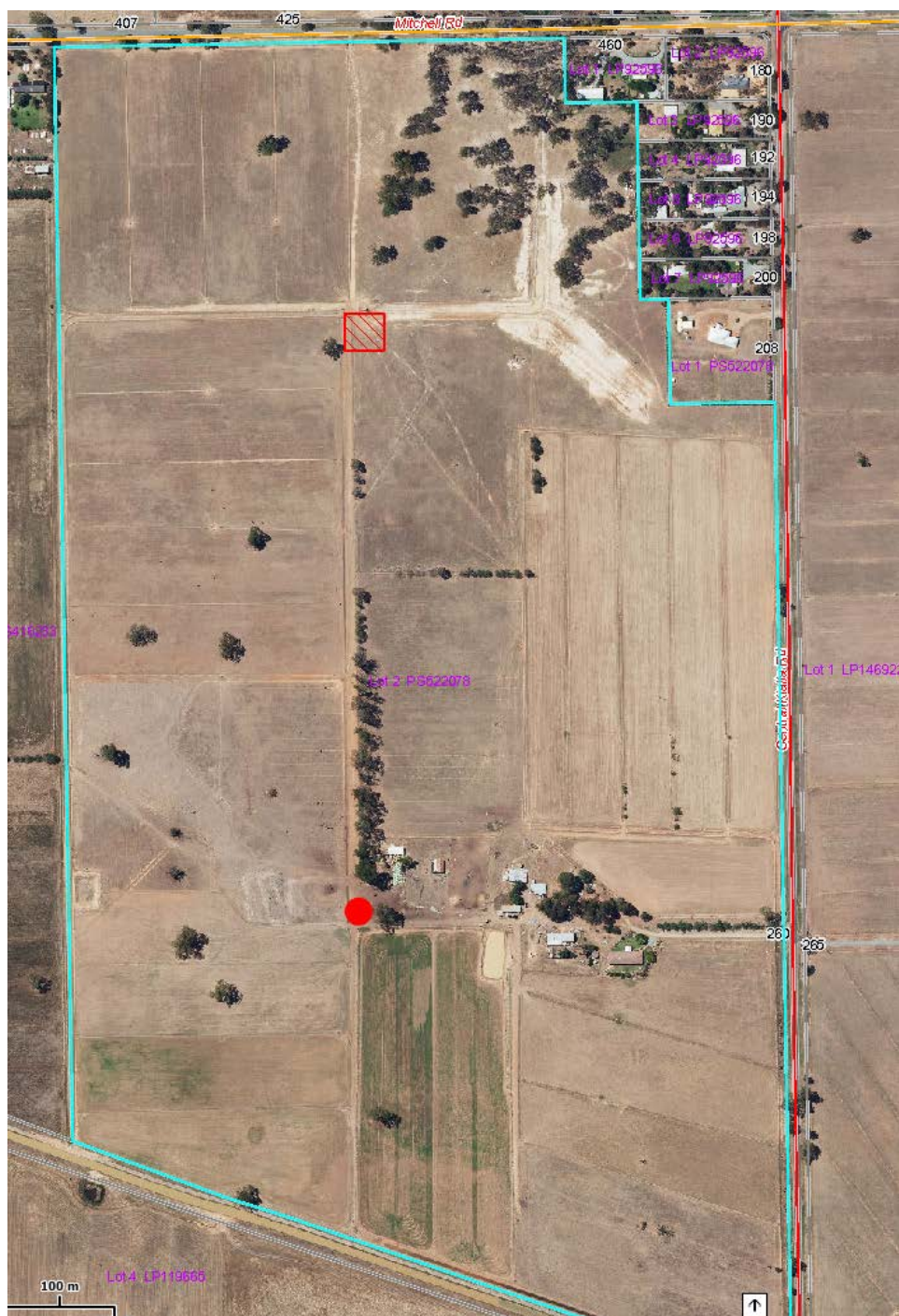
The first application proposed to locate the tower at the northern end of the site with a setback of about 270 metres from the dwelling's fronting Central Kialla Road. This application was advertised and seven objections lodged.

### The amended application

On 7 March 2013 the application submitted an amended application under section 57A of the Act. This amended application was lodged in response to the objections to the first application. The amended application relocated the tower 560 metres to the south of the initial proposed location. The revised location resulted in the setback from the dwellings fronting Central Kialla Road increasing to about 650 metres.

The amended application was advertised to the neighbouring property to the south, who did not object to the amended application.

The below aerial plan shows the location of the two proposed tower locations (the dot indicates the amended application, the hatched square shows the initial proposed tower location).



It is considered the proposed application is acceptable for the following reasons:

- The proposed tower is well setback from the nearest dwelling and property boundaries which minimises potential conflict between the tower and other land uses including dwellings
- The proposed tower is required to operate within mandatory radiation levels of which are considered to provide adequate protection to the community
- The application achieves an acceptable balance between the need to provide telecommunication services and amenity of the area by locating the tower in the centre of a large property of which is well setback to dwellings, avoids the need for the removal of native vegetation, limits the loss of productive agricultural land and uses existing tree belts for screening.
- The Airport Committee reviewed the application and consented to the grant of a permit subject to conditions including

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## Summary of Key Issues

- The application for a planning permit proposes the buildings and works in the Farming Zone and in accordance with 52.19 the construction of a telecommunications facility.
- The application was referred internally to the Council's Airport committee, who do not object to the issue of a permit, subject to conditions.
- The application was publicly notified through letters to surrounding neighbours, a sign onsite and a notice in the Shepparton News.
- Seven objections were initially lodged, following the submission of a Section 57A application; two objections were withdrawn, resulting in five objections to the development.
- The proposed tower location is setback about 800 metres from the nearest objectors land.
- The DHP has discretion to consider applications of which have five or less objections.

## **Moved by Braydon Aitken and Seconded by Cr Michael Polan**

That Council having caused notice of Planning Application No. 2012-364 to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* and having considered the objections to the application, decides to Grant a Notice of Decision to Grant a Permit under the provisions of 35.07-4 and 52.17-2 of the Greater Shepparton Planning Scheme in respect of the land known and described as 260 Central Kialla Road KIALLA VIC 3631, for the telecommunications tower (40 metre high monopole) and associated equipment in accordance with the Notice of Decision and the endorsed plans.

### **Discuss key Conditions (including Referral Authorities):**

1. Layout not altered.
2. Shepparton Aerodrome Advisory Committee.
3. Construction phase.
4. Landscape plan.
5. Rural Drainage.
6. Cessation of use.
7. Time for starting and completion.

## **CARRIED**

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### **Subject Site & Locality**

An inspection of the site and the surrounding area has been undertaken.

Date: 20 March 2013

Time: 8.45am

The site has a total area of 75.83ha and currently contains:

- an existing dwelling
- agricultural land that is used for grazing and cropping

The main site/locality characteristics are:

- to the north east of the land is a number of small lots with dwellings in the FZ
- about 470 metres to the north of the land is the township of Kialla Central of which is within the LDRZ and includes a primary school
- on the eastern side of Central Kialla Road is a large dairy farm
- to the south of the land is agricultural land and the Kialla Golf Course

The Photos below show the existing site:



Existing tree screen and location of the tower at the southern end of the screen





Tree screen



Location of the proposed tower



View north towards the Mitchell Road and area of the objectors

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## Permit/Site History

The history of the site includes:

- There is no previous planning permit history for this site.

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## Further Information

Was further information requested for this application? No

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## Public Notification

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site.
- Notice in Newspaper.

The applicant provided a signed declaration that the signed was displayed on the land between 3 December and 17 December 2013.

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## Objections

The application was advertised and seven objections lodged. Following the submission of the amended application two of the objections were withdrawn, reducing the number of objectors to five.

The Council has received five objections to date. The key issues that were raised in the objections are.

- The visual impacts to residents of nearby dwellings;
- The possible health effects on residents in nearby dwellings from radio waves emitted by the facility;
- Lack of community consultation
- De-valuation of property prices

Some objectors suggested a change to the application they would like to see as being relocation of the tower further to the south.

On 12 February 2013, the applicant provided a written response to all objections of which included the amended tower location. On 14 February 2013 the Planning Department provided a copy of the applicant's letter and revised plans to all objectors.

#### Officer's response to objectors

##### Visual impacts

The proposed 40 metre high tower is setback not less than about 630 metres from the nearest dwelling of which is located to the south of the land. The tower location to the nearest objectors land is about 790 metres.

The tower is located to the south of an existing screen of mature trees of which are about 25 metres in height. This established windbreak will offer some screening of the tower.

##### Health impacts

The objections raised the potential of health impacts to the users of surrounding land. In considering the potential health effects of the proposed facility, the applicant has noted that they will be required by legislation to ensure that each radio wave is transmitted within a frequency band, which is allocated and enforced by the Australian Communications and Media Authority.

Rundell noted in *Optus Mobile v Macedon Ranges SC* (2009) VCAT 2578 that *"the Code of Practice for Telecommunications Facilities requires that a telecommunications facility must be designed so that the maximum human exposure levels to radio emissions comply Radiation Protection Standard..., It is beyond the role of the Tribunal to inquire if these standards are appropriate. Compliance with these standards is mandatory, and no discretion is available to me, or sought by the applicant, to vary the standards.*

For the above reasons the potential health effects of the proposed telecommunications facility are out the scope of assessment for the planning permit application.

##### Lack of community consultation

The planning application was widely advertised by letters to neighbours, sign on site and notice in the Shepparton News. The amended application was provided to all objectors and the 57A application formally advertised to the neighbouring land to the south.

##### Devaluation of property prices

It is widely accepted in planning that the devaluation of property prices is not a relevant planning consideration.

Based on the above responses it is not considered that the objections should lead to the refusal of the application for the following reasons:

- The relocation of the tower reduces the visual impact of the tower on the objectors as the setback has increased to about 790 metres
- The operation of towers are required to comply with relevant radiation standards
- The application was widely advertised in accordance with the provisions of the Act
- The devaluation of property is not a valid ground of objection

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## Title Details

The title does not contain a Restrictive Covenant.

The title contains a Section 173 Agreement (AC843120Y). The relevant part of the agreement to the land prohibits the further subdivision of land. As the application does not propose subdivision, the application does not breach the agreement.

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## Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

- The planning officer contacted most objectors on 4 and 7 March 2013 to discuss the proposed amended plans. These discussions resulted in the removal of two objectors.

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## Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	The application for a planning permit was not referred to any authorities.
Section 52 Notices	The application for a planning permit was not notified to any authorities.

Internal Council Notices	Advice/Response/Conditions
Airport Committee	<p>The application was referred internally to the airport committee, who do not object to the issue of a permit subject to the following conditions being included on the permit:</p> <ol style="list-style-type: none"><li>1. At no time during the development and use of the facility and land affected by this Planning Permit is the Shepparton Aerodrome Obstacle Limitation Surface to be breached.</li><li>2. The communications tower must be fitted with markings and lighting that satisfies the requirements of the Civil Aviation Safety Authority's Manual of Standards Part 139, Sections 8.10 and 9.4. The markings and lighting are to be maintained in a safe and operating state at all times.</li><li>3. The proposed structure is not to exceed RL 156.196 AHD in height.</li><li>4. The developers and owners of the facilities must report the construction and details of the completed facilities to the Royal Australian Air Force (RAAF) in accordance with the details provided in the CASA advisory Circular, AC 139-08 "Reporting of Tall Structures"</li><li>5. Buildings must be constructed and maintained with non-reflective materials</li><li>6. The landowners/operators must not install and/or use any device that may cause electrical or radio interference with Aviation Navigation Aids.</li></ol>

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## Assessment

### **The zoning of the land**

Farming Zone 35.07

The purpose of the Farming Zone is to provide for the use of land for agriculture and to ensure that non-agricultural uses, particularly dwellings do not adversely affect the use of land for agriculture.

A planning permit was required for buildings and works in the Farming Zone under clause 35.07-4.

As a permit was not required for the use of the land, therefore only a small number of the decision guidelines have been considered in relation to the development of the site.

Given the small parcel of land on which the tower and facilities are to be located, it is not envisaged that there will be any loss of productive agricultural land or an effect on the existing agricultural activities.

When considering the design and siting of the development on the surrounding environment the applicant has shown in addressing the Code of Practice they have attempted to minimise the impacts of the facility.

The development of the land for a Telecommunications facility like this one to service a community will always involve a tower of significant height, so there is no avoiding that it will be visible from certain viewpoints. The siting though not completely invisible provides setbacks from areas of higher populations, so as to reduce the potential impact of the facility on the views and vistas of the locality.

### **Relevant overlay provisions**

Land Subject to Inundation Overlay 44.04-4

The Overlay identifies land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority. The Overlay's purpose is to ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

A planning permit was not triggered under the Land Subject to Inundation Overlay and therefore the provisions of the overlay have not been taken into account.

The area of FO is limited to the north eastern corner of the land in a location of which the tower is not proposed to be constructed.

### **The State Planning Policy Framework (SPPF)**

Telecommunications 19.03-4

Objectives and strategies:

- To facilitate the orderly development, extension and maintenance of telecommunication infrastructure.
- Facilitate the upgrading and maintenance of telecommunications facilities.
- Ensure that modern telecommunications facilities are widely accessible to business, industry and the community.
- Ensure the communications technology need of business, domestic, entertainment and community services are met.
- Do not prohibit the use of land for a telecommunications facility in any zone.
- Encourage the continued deployment of broadband telecommunications services that are easily accessible by:
  - Increasing and improving access for all sectors of the community to the broadband telecommunication trunk network.
  - Supporting access to transport and other public corridors for the deployment of broadband networks in order to encourage infrastructure investment and reduce investor risk
- In consideration of proposals for telecommunication services, seek a balance between the provision of important telecommunications services and the need to protect the environment from adverse impacts arising from telecommunications infrastructure.
- Planning should have regard to national implications of a telecommunications network and the need for consistency in infrastructure design and placement.

Planning must consider as relevant:

- *A Code of Practice for Telecommunications Facilities in Victoria* (Department of Sustainability and Environment, 2004).

**The Local Planning Policy Framework (LPPF)- including the Municipal Strategic Statement (MSS), local planning policies and Structure Plans**

Urban and Rural Services 21.07-2

An objective of the Clause is to provide telecommunications facilities available to all areas of the municipality.

**Relevant Particular Provisions**

Telecommunications Facility 52.19

The purpose of the provision is to:

- Ensure that telecommunications infrastructure and services are provided in an efficient and cost effective manner to meet community needs.
- Ensure the application of consistent provisions for telecommunications facilities.
- Encourage an effective state-wide telecommunications network in a manner consistent with the economic, environmental and social objectives of planning in Victoria as set out in Section 4 of the Planning and Environment Act 1987.
- Encourage the provision of telecommunications facilities with minimal impact of the amenity of the area.

#### Application 52.19-1

These provisions apply to the construction of a building or the construction or carrying out of works associated with the use of the land for a telecommunications facility. They apply to the extent permitted under the Telecommunications Act 1997 (Cwth) and determinations made under that Act by the relevant Commonwealth Minister for Telecommunications, including the Telecommunications (Low-impact Facilities) Determination 1997.

Pursuant to Clause 52.19-2 a planning permit is required to construct a building or carry out works for a Telecommunications facility.

#### Decision Guidelines

Before deciding on an application, in addition to the decision guidelines of Clause 65, the responsible authority must consider, as appropriate:

- The principle for design, siting, construction and operation of a Telecommunications facility set out in A Code of Practice for Telecommunications Facilities in Victoria.
- The effect of the proposal on adjacent land.
- If the Telecommunications facility is located in an Environmental Significance Overlay, a Vegetation Protection Overlay, a Significant Landscape Overlay, a Heritage Overlay, a Design and Development Overlay or an Erosion Management Overlay, the decision guidelines in those overlays and the schedules to those overlays.

The following is an assessment against the provisions and principles of the Code of Practice.

The following four principles must be applied where relevant to the design, siting, construction and operation of any telecommunications facility which is not exempt under Commonwealth legislation.

Principle	Response
<p><b>A telecommunications facility should be sited to minimise visual impact.</b>  Application of principle</p> <ul style="list-style-type: none"> <li>On, or in the vicinity of a heritage place, a telecommunications facility should be sited and designed with external colours, finishes and scale sympathetic to those of the heritage place. A heritage place is a heritage place listed in the schedule to the Heritage Overlay in the planning scheme.</li> <li>A telecommunications facility mounted on a building should be integrated with the design and appearance of the building.</li> <li>Equipment associated with the telecommunications facility should be screened or housed to reduce its visibility.</li> <li>The relevant officer of the responsible authority should be consulted before any street tree is pruned, lopped, destroyed or removed.</li> <li>A telecommunications facility should be located so as to minimise any interruption to a significant view of a heritage place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land.</li> </ul>	<ul style="list-style-type: none"> <li>There are no heritage places within the vicinity of the proposed telecommunications facility.</li> <li>The proposed facility will not be mounted on a building.</li> <li>No street trees are required to be removed.</li> <li>The proposed site will not abut, nor is it adjacent to any existing or proposed residential areas.</li> </ul>
<p><b>Telecommunications facilities should be co-located wherever practical.</b>  Application of principle</p> <ul style="list-style-type: none"> <li>Wherever practical, telecommunications lines should be located within an existing underground conduit or duct.</li> <li>Overhead lines and antennae should be attached to existing utility poles, towers or other radio communications equipment to minimise unnecessary clutter.</li> </ul>	<ul style="list-style-type: none"> <li>The applicant has identified that there are no co-location opportunities available in the Kialla area</li> </ul>
<p><b>Health standards for exposure to radio emissions will be met.</b>  Application of principle</p> <ul style="list-style-type: none"> <li>A telecommunications facility must be designed and installed so that the maximum human exposure levels to radio frequency emissions comply with <i>Radiation Protection Standard – Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300 GHz</i>, Arpansa, May 2002.</li> </ul>	<ul style="list-style-type: none"> <li>The applicant has advised that the band width of waves emitted by the facility are strictly enforced to ensure that they do not interfere with surrounding radio equipment</li> <li>The applicant has also provided a report which was prepared for the site to predict the maximum level of electromagnetic energy at ground level surrounding the proposed tower, which will be less than 0.02% of the maximum allowable level.</li> </ul>
<p><b>Disturbance and risk relating to siting and construction should be minimised. Construction activity and site location should comply with State Environment protection policies and best practice environmental management guidelines.</b>  Application of principles</p> <ul style="list-style-type: none"> <li>Soil erosion during construction and soil instability during operation should be minimised in accordance with any relevant policy or guideline issued by the Environment Protection Authority.</li> <li>Construction should be carried out in a safe and effective manner in accordance with relevant requirements of the <i>Occupational Health and Safety Act 1985</i>.</li> <li>Obstruction or danger to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction should be minimised.</li> <li>Where practical, construction should be carried out during times that cause minimum disruption to</li> </ul>	<ul style="list-style-type: none"> <li>A construction phase condition will be included on the permit to address this principle.</li> </ul>



<p>adjoining properties and public access.</p> <ul style="list-style-type: none"><li>• Traffic control measures should be taken during construction in accordance with <i>Australian Standard AS1742.3 – 2002 Manual of uniform traffic control devices – Traffic control devices on roads</i>.</li><li>• Open trenching should be guarded in accordance with <i>Australian Standard Section 93.080 – Road Engineering AS 1165 – 1982 – Traffic hazard warning lamps</i>.</li><li>• Disturbance to flora and fauna should be minimised during construction and vegetation replaced to the satisfaction of the land owner or responsible authority at the conclusion of work.</li><li>• Street furniture, paving or other existing facilities removed or damaged during construction should be reinstated (at the telecommunication carrier's expense) to at least the same condition as that which existed prior to the telecommunications facility being installed.</li></ul>	
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### **The decision guidelines of Clause 65**

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

- The following decision guidelines are relevant to this application:
- The matters set out in Section 60 of the Act.
- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.

### **Response**

The matters listed under the decision guidelines of clause 65 have been addressed under other sections of this report. The effect of the facility on the amenity of the locality has been addressed in the objectors concerns in an assessment against the code.

### **Relevant incorporated or reference documents**

Telecommunications Facilities 'A Code of Practice for Telecommunications Facilities in Victoria' – the code and the guidelines are addressed under other sub-sections of this report.

### **Other relevant adopted State policies or strategies policies**

There is no other relevant adopted State or strategic policies that relate to this application.

### **Relevant Planning Scheme amendments**

There are no relevant Planning Scheme amendments that relate to this application.

**Are there any significant social & economic effects?**

The application does not raise any significant social or economic effects.

**Discuss any other relevant Acts that relate to the application?**

There are no relevant Acts that relate to this application.

The land is not within an area of cultural heritage sensitivity, therefore the application does not trigger the need for a cultural heritage management plan.

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## **Conclusion**

Given consideration to the relevant planning scheme provisions and the *Telecommunications Facilities 'A Code of Practice for Telecommunications Facilities in Victoria'*, the proposed installation of a telecommunications facility is considered to achieve acceptable outcomes. Consequently it is recommended that the Panel decide to issue a Notice of Decision to grant a permit.

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# Draft Notice Of Decision

**APPLICATION NO:** 2012-364

**PLANNING SCHEME:** GREATER SHEPPARTON PLANNING SCHEME

**RESPONSIBLE AUTHORITY:** GREATER SHEPPARTON CITY COUNCIL

**THE RESPONSIBLE AUTHORITY HAS DECIDED TO GRANT A PERMIT.**

**THE PERMIT HAS NOT BEEN ISSUED.**

**ADDRESS OF THE LAND:** 260 CENTRAL KIALLA ROAD KIALLA VIC 3631

**WHAT THE PERMIT WILL ALLOW:** TELECOMMUNICATIONS TOWER (40 METRE HIGH MONOPOLE) AND ASSOCIATED EQUIPMENT

## **WHAT WILL THE CONDITIONS OF THE PERMIT BE?**

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**1. Layout Not Altered**

The development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

**2. Shepparton Aerodrome Advisory Committee**

- a) At no time during the development and use of the facility and land affected by this Planning Permit is the Shepparton Aerodrome Obstacle Limitation Surface to be breached.
- b) The communications tower must be fitted with markings and lighting that satisfies the requirements of the Civil Aviation Safety Authority's Manual of Standards Part 139, Sections 8.10 and 9.4. The markings and lighting are to be maintained in a safe and operating state at all times.
- c) The proposed structure is not to exceed RL 156.196 AHD in height.
- d) The developers and owners of the facilities must report the construction and details of the completed facilities to the Royal Australian Air Force (RAAF) in accordance with the details provided in the CASA advisory Circular, AC 139-08 "Reporting of Tall Structures"
- e) Buildings must be constructed and maintained with non reflective materials
- f) The landowners/operators must not install and/or use any device that may cause electrical or radio interference with Aviation Navigation Aids.

**3. Construction Phase**

All activities associated with the construction of the development permitted by this permit must be carried out to the satisfaction of the Responsible Authority and all care must be taken to minimise the effect of such activities on the amenity of the locality, including:

- a) Avoiding the transport of mud onto roads;
- b) Minimising the generation of dust during earthworks or vehicles accessing site;
- c) The retention of all silt and sediment on the site during the construction phase, in accordance with the sediment control principles outlined in Construction Techniques for Sediment Pollution Control (EPA, 1991)' and;
- d) Maintaining a neat and tidy site.

**4. Rural Drainage**

Before the operation of the telecommunication facility, all stormwater and surface water drainage from the land, buildings and works must be connected to the legal point of discharge or retained on site to the satisfaction of the responsible authority.

**5. Cessation of use**

Should the use of the land for a telecommunication facility cease the tower and all associated infrastructure must be removed and the site area reinstated to its original state within three months of the use ceasing to the satisfaction of the responsible authority.

**6. Time for Starting and Completion**

This permit will expire if one of the following circumstances applies:

- a) the development is not started within **two (2) years** of the date of this permit;
- b) the development is not completed within **four (4) years** of the date of this permit.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires or within three (3) months afterwards.

Meeting closed at 10.17 am

Note:

A transcript of today's meeting can be found in TRIM at E09/253.