

1 TELECOMMUNICATIONS FACILITY, 115 MOUNT BURNETT ROAD, MOUNT BURNETT

FILE REFERENCE INT1852122

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RECOMMENDATION

That a Notice of Decision to Grant Planning Permit T180045 be issued for the use and development of a Telecommunications Facility at 115 Mount Burnett Road, Mount Burnett VIC 3781 subject to the conditions attached to this report.

Attachments

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| 1 | Locality map | 1 Page |
| 2 | Development plans | 5 Pages |
| 3 | Copy of objections, circulated to councillors only | 6 Pages |

EXECUTIVE SUMMARY:

APPLICATION NO.:	T180045
APPLICANT:	Singtel Optus Pty Ltd C/- Catalyst One Pty Ltd
LAND:	115 Mount Burnett Road, Mount Burnett VIC 3781
PROPOSAL:	Use and development of a Telecommunications Facility
PLANNING CONTROLS:	Green Wedge Zone - Schedule 2 (GWZ2) Environmental Significance Overlay - Schedule 1 (ES01)
NOTIFICATION & OBJECTIONS:	<p>The application has been advertised by sending notices to the owners and occupiers of adjoining land; placing one (1) sign on site and placing a notice in the Pakenham Gazette newspaper.</p> <p>Four objections have been received to date.</p>
KEY PLANNING CONSIDERATIONS:	Telecommunication facilities, visual impact, rural and landscape character, site location, proximity to dwellings.
RECOMMENDATION:	Approval

BACKGROUND:

The subject site has been subject to a previous application T090127 relating a two lot subdivision of the land. This application was refused and this decision was upheld by VCAT (Ref P110/2010).

SUBJECT SITE

The site is located on the north side of Mount Burnett Road approximately 1.2 kilometres south-west of Gembrook Road in Mount Burnett. The site is irregular in shape with an overall area of 45.63 hectares. The site is undulating with a number of easements burdening the site although none are within proximity to the area proposed to be developed.

The site is a rural property dissected by a creek in the southern portion of the site with extensive grazing land and some vegetation surrounding the creek area. The site contains a number of buildings in the south west (Mt Burnett Road frontage) portion of the site, including a dwelling with access provided by crossovers on the east and west side of the site's frontage.

The main characteristics of the surrounding area are:

- *North:* The land to the north includes a rural property with dwelling well separated from the common boundary with a creek and established vegetation located between the dwelling and the common boundary.
- *South:* The land abutting the south includes a rural residential property with an area of 2 hectares and is well separated from the proposed location of the facility. The remaining areas abutting the south boundary include the Mount Burnett Road reserve with a gravel road surface and established roadside vegetation.
- *East:* The land to the east includes a number rural properties used for agricultural purposes with dwellings well separated from the common boundary and the northernmost property including an established row of trees along the common boundary.
- *West:* The land to the west includes a number rural properties used for agricultural purposes with dwellings well separated from the common boundary. A key feature of the property to the west is a creek and surrounding vegetation.

The overall area is a rural landscape with agriculture being the dominant use and a number watercourses and some limited remnant vegetation notable along the creek lines. The area is undulating providing for a rural landscape with interspersed buildings and infrastructure noted in the surrounding context.

PROPOSAL

The application is for the use and development of a Telecommunications Facility to provide improved mobile and data service coverage for Gembrook and the surrounding area. The applicant states that after investigating a number of sites, the proposed property was the preferred site in order to meet their needs in regard to coverage and availability as there are no viable co-location opportunities.

The facility will be located in the northern portion of the site with a minimum setback of 526 metres from the north boundary and 6.5 metres from the east boundary. The infrastructure will be located in a compound area of 7 metres by 7 metres with no removal of vegetation.

The telecommunications facility will comprise a 30 metre concrete monopole with triangular headframe and three panel antennas and radio remote units with the structure providing an overall height of 32.3 metres with ancillary components including an outdoor equipment cabinet

The specific components of the proposed installation are described below:

- A 30m concrete monopole with internal cabling;
- A triangular headframe with three mounted panel antennas (2.5 metres by 1.8 metres) with twelve (12) radio remote units installed behind the panels with the overall height of 32.3 metres;

- A parabolic antenna at a height of 27 metres;
- A 2.4m high chainlink security compound fence (compound area 7m x 7m), with 3m wide access gate; and
- Two (2) bay outdoor equipment cabinet with pale eucalypt material.

The compound will be accessed from Mount Burnett Road with a gravel access track approximately 3 metres wide along the east boundary connecting to an existing track and crossover.

PLANNING SCHEME PROVISIONS

State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- 11.06-7 Green wedges;
- 12.04-2 Landscapes; and
- 19.03-4 Telecommunications.

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- 21.02-2 Landscape;
- 21.04-1 Employment; and
- 21.05-1 Infrastructure provision.

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.19 Telecommunications Facility;
- Clause 57 Metropolitan Green Wedge Land;
- Clause 65 Decision Guidelines;
- Clause 66 Referral and Notice Provisions; and
- Cardinia Shire's Liveability Plan 2017-2029.

Zone

The land is subject to the Green Wedge Zone - Schedule 2 (GWZ2).

Overlays

The land is subject to the Environmental Significance Overlay – Schedule 1 (ES01).

PLANNING PERMIT TRIGGERS

The proposal requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 35.04-1 of the Green Wedge Zone, a permit is required to use the land for a Telecommunications Facility;
- Pursuant to Clause 35.04-1 of the Green Wedge Zone, a permit is required to construct a building or carry out works associated with a use in Section 2 of Clause 35.04-1;

- Pursuant to Clause 42.01-2 of the Environmental Significance Overlay, a permit is required to construct a building or carry out works; and
- Pursuant to Clause 52.19, a permit is required to construct a building or carry out works for a Telecommunications Facility.

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 one (1) sign on site facing Mount Burnett Road; and
- Placing a notice in the Pakenham Gazette newspaper.

Council has received four (4) objections to date and one (1) letter of support.

The key issues that were raised in the objections are:

- Negative visual impacts to the landscape and rural character of the area;
- The close proximity of dwellings to the proposed telecommunications facility;
- The potential for health impacts;
- Negative impacts on property values;
- The potential for the facility to be co-located with other nearby facilities; and
- Limited community consultation opportunities.

REFERRALS

The application was not required to be referred to any external authorities or departments.

DISCUSSION

The proposal is generally consistent with the relevant State and Local Planning Policy Framework, the Green Wedge Zone 2, Environmental Significance Overlay 1, Clause 52.19 and Clause 65.

State and Local Planning Policy Framework

A number of state and local policies are relevant to this application, including clauses 12.04-2 (Landscape) and 21.02-2 (Landscape), which aim to protect landscapes and significant open spaces that contribute to the character, identity and sustainable environments and ensure the sensitive siting of buildings and other structures having regard to the protection of prominent ridgelines, significant views and areas of remnant vegetation.

Clause 11.04-7 (Green wedges) aims to protect the green wedges of metropolitan Melbourne from inappropriate development, with specific strategies including the protection of areas of environmental, landscape and scenic value and support for development that provides for environmental, economic and social benefits.

Clause 19.03-4 (Telecommunications) aims to facilitate the orderly development, extension and maintenance of telecommunication infrastructure. The clause aims encourage the continued deployment of broadband telecommunications services and ensure that modern telecommunications facilities are widely accessible to business, industry and the community.

The provision of infrastructure to meet the needs of the existing and future community is also highlighted as a key issue in Clause 21.01, and reinforced by Clause 21.05-1 (Infrastructure provision), which encourages the provision of high capacity telecommunications infrastructure.

Although the proposal will be visible within a generally rural landscape, this infrastructure is not uncommon within the wider site context. The simple design of the facility combined with the retention of vegetation has minimised the impact on the rural landscape and provides an appropriate balance between the policy directions of the provision of appropriate telecommunications for the immediate and wider area and the impacts on the surrounding landscape.

Green Wedge Zone (GWZ2) & Environmental Significance Overlay (ESO1)

The rural characteristics of the site will not be compromised given the total area allocated for the facility relative to the land size. While the use and development does not directly relate to the rural land use of the area, it supports the surrounding community through the provision of improved telecommunications infrastructure. The site has capacity for the installation of a telecommunications facility without compromising agricultural uses or causing any irreversible land impacts.

Overall, the siting of the facility is appropriate in this rural context given the extent of vegetation coverage in the vicinity and setbacks from title boundaries. Expansive views will still be maintained from adjoining land. No vegetation removal is required and the facility is setback in excess of 500 metres from the closest dwelling and over 200 metres from the creek. The site is not located within an area of zoological or botanical significance.

A visual impact assessment has been submitted by the applicant which shows that the structure will be visible in the wider site context from surrounding vantage points including Mt Burnett Road (1km) and Belgrave Gembrook Road (2km). The assessment concludes that the facility will have a moderate to high level of visual impact but that this impact will vary depending on the viewing distance, number of viewers, period of view and vantage point within the surrounding areas.

As highlighted in the VCAT case P1101/2013, the simple visibility of the tower from surrounding land does not mean that there is an unacceptable planning or visual impact. VCAT also states that minimising an adverse impact on visual amenity does not mean that the telecommunication pole must be sited so that it cannot be seen by most or many people. Visibility cannot be equated to adverse visual impact. It is the extent to which a development is compatible with the particular location and how policies seek to guide change that is most relevant.

The site's location within a rural area means it is separated from any large concentration of residential dwellings and generally limits the level of visual impact to users of the road and scattered dwellings to the south. The advantages of improved telecommunications services as a result of the facility is considered to outweigh any general loss of visual amenity.

Clause 52.19 Telecommunications Facility

Pursuant to Clause 52.19, an application for a telecommunications facility must be assessed against the Telecommunications Code of Practice, the impacts on the adjoining properties and the decision guidelines of the Environmental Significance Overlay. The final two points have previously been discussed and an assessment against the relevant principals of the Code of Practice is provided below:

Principle 1: A telecommunications facility should be sited to minimise visual impact

The facility is generally well setback from the site frontage, common boundaries and neighbouring dwellings, with a minimum 6.5-metre setback from the east boundary, over 200 metres from the creek on the site and approximately 500 metres from the nearest dwelling. Whilst it is acknowledged that the facility will be visible from adjoining land given the overall 32.3-metre height and undulating topography, the visual impact is not unreasonable in this rural context given its slimline design and appropriate setbacks and siting. Expansive views will still be maintained from adjoining and opposite land. Established vegetation on the subject site will also help to minimise the impact of the facility.

The site is not located within the vicinity of a Heritage Place nor will it be mounted on an existing building. Equipment associated with the facility will generally be screened at ground level and associated feeder cables will be located underground.

The applicant has stated that the proposed monopole is the smallest structure capable of meeting coverage and operational objectives. Having regard to the above, it is considered that the siting of the facility is appropriate.

Principle 2: Telecommunications facilities should be co-located wherever practical

To minimise the distribution of such facilities, this site has been selected as there is no existing infrastructure within the immediate area and co-location opportunities are limited as shown by the applicant.

Principal 3: Health standards for exposure to radio emissions will be met

In support of the proposal, the applicant has submitted an Environmental Electromagnetic Energy Report. The report concludes that the maximum EME level calculated for the proposed system is 3.83 V/m; equivalent to 38.84 mW/m² or 0.61% of the public exposure limit, which is 160 times lower than the Australian Standard.

Principle 4: Disturbance and risk relating to siting and construction should be minimised

In addition to the EPA requirements, the facility must comply with necessary erosion and sediment control measures. The operation of the facility will not produce waste which would require collection or disposal.

A condition of approval will require that all earthworks be undertaken in a manner to prevent soil erosion and that all works must be appropriately stabilised.

Noise and vibration emissions associated with the proposed facility are expected to be limited to the initial construction phase. Noise generated during the construction phase is anticipated to be of short duration and accord with the standards outlined in the relevant EPA guidelines. The applicant has advised that on-going noise emanating from the equipment is comparable with a domestic air conditioning unit which is not unreasonable in this rural setting.

Response to Objections

Four objections have been received to date. A response to the key issues and concerns is provided below:

Visual Impact & Proximity of Dwellings

Whilst it is acknowledged that the facility will be visible from adjoining land, it is not considered to have an unreasonable adverse impact given the setbacks from title boundaries and nature of the surrounding rural allotments. The facility will be setback approximately 500 metres from the dwelling to the east and 700 metres from the property to the north and is not unreasonable in this rural context. Expansive views are still maintained to and the proposed infrastructure is partially obscured by the established vegetation along the common boundary.

The simple form of the structure combined with partial screening by established vegetation will help to minimise impact on the immediate and wider site context. There are existing power poles and a similar structure on Maisey Road is constructed using similar materials and is not considered to be visually intrusive.

A condition of approval will require that external materials must be non-reflective.

Health Impacts

Health impacts associated with such facilities has been explored in a number of VCAT hearings.

In *Lucent Technologies v Maribyrnong CC Laffey and Ors* [2001] VCAT 1955, the Tribunal member determined that:

"...it would not be appropriate to reject the proposal on health grounds given that the proposal complies so easily with the relevant Australian Standard which has been put in place by government authorities. If there are queries about the appropriateness of the standard, then this should be the subject of government review."

Another VCAT decision (VCAT reference P3620/2004), the Tribunal member concluded that:

"It is not appropriate for the Tribunal to question such standards. In making decisions and imposing conditions the Tribunal should accept standards that are set by relevant Government agencies responsible for controlling the matters addressed by the standards and should not look behind them."

In another relevant case (VCAT reference P3407/2008), the Tribunal member stated that:

"Clearly residents have a strongly held fear about the effects of Electro Magnetic Radiation but I have reached the conclusion that I could not reject the proposal on health grounds because of the very easy compliance with the relevant Australian Standard in relation to electromagnetic radiation."

As detailed above, the applicant has submitted an Environmental EME Report that demonstrates that the maximum EME level calculated is significantly below the public exposure limit.

A condition of approval will require that electromagnetic energy emissions must comply with the Australia Radiation Protection and Nuclear Safer Agency (ARPANSA).

Effect on property value

A number of VCAT decisions have concluded that a decrease in property value, perceived or actual, cannot be considered as part of a planning application.

Community Consultation

Issues were raised with regard to community consultation for the proposed facility. The proposed application has been notified in accordance with the *Planning and Environment Act 1987* and has satisfied the requirements under the Cardinia Planning Scheme in terms of community consultation.

The potential for the facility to be co-located with other nearby facilities

The potential to co-locate the proposed Optus facility with other facilities, including an existing Telstra monopole, was investigated by the applicant during the site selection process. The existing Telstra site at Maisey Road, Gembrook, consists of a 40-metre monopole. It is located approximately 965 metres north-east of the proposed site.

According to the applicant, a structural analysis of this facility revealed that the monopole is already at full capacity and does not have the integrity or load capacity to accommodate additional infrastructure.

The site selection process also found that there are no opportunities to co-locate the proposed facility with existing buildings or utility structures.

Cardinia Shire's Liveability Plan 2017-2029

Cardinia Shire's Liveability Plan has been developed to provide a clear framework for public health planning within the Shire, and it has a number of goals and actions relating to policy domains that include active travel, education, employment and housing. The application is considered consistent with this Plan as the provision of improved telecommunications coverage supports increased safety, improved social cohesion and economic development.

Decision Guidelines

The proposal is consistent with the SPPF and LPPF, the purpose of the zone and relevant provisions. The proposal does not undermine the orderly planning of the area and the siting, design and visual impact of the facility is considered appropriate when regard is given to the social and economic benefits provided by improved and enhanced telecommunications.

CONCLUSION

The proposed facility, comprising a 30 metre high monopole with attached antennas and equipment cabinets has been located in a site which meets visual amenity issues which meets the ability to ensure adequate coverage is achieved. The proposal satisfies the requirements of the Code of Practice for Telecommunications Facilities in Victoria, whilst also addressing coverage deficiencies within the local area.

The proposal is also consistent with the stated objectives of the Cardinia Planning Scheme and, in particular, Clause 52.19 relating to telecommunications facilities, and is not considered to be detrimental to the amenity the surrounding area although visible has been sited and designed to provide an appropriate balance between visual impacts and the provision of improved services for the wider site context.

It is therefore recommended that a Notice of Decision for planning permit T180045 be issued for the use and development of the land for a telecommunications facility at 115 Mount Burnett Road, Mount Burnett subject to the following conditions:

CONDITIONS

1. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. The site must be so ordered and maintained as not to prejudicially affect the amenity of the locality by reason of appearance.
3. The exterior colour and cladding of the telecommunication facility must not result in any adverse visual impact on the environment of the area and all external cladding and trim of the equipment shelter, including the roof, must be of a non-reflective nature.
4. Electromagnetic energy emissions must comply with the Australia Radiation Protection and Nuclear Safer Agency (ARPANSA).
5. Earthworks must be undertaken in a manner that minimises soil erosion. Exposed areas of soil must be stabilised to prevent soil erosion. The time for which soil remains exposed and unestablished must be minimised to the satisfaction of the Responsible Authority.

Expiry:

A permit for the development and use of land expires if—

- a) the development does not start within **two (2) years** after the issue of the permit; or
- b) the development is not completed within **four (4) years** after the issue of the permit; or
- c) the use does not start within **two (2) years** after the completion of the development; or
- d) the use is discontinued for a period of **two (2) years**.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.











