

ALLOCATED OFFICER	Michelle Warren
DATE RECEIVED	27-Apr-2017
PROPERTY NUMBER	12290
PROPERTY ADDRESS	RHONDDA, 1435 ANGLESEA ROAD, BELLBRAE, VIC 3228
LOT SIZE	27.9ha (approximate)
APPLICANT	Aurecon Australia
OWNER	MC MOORE
PROPOSAL	Use and Development for a Telecommunications Facility
ZONE	Farming Zone
OVERLAYS/S	Significant Landscape Overlay-Schedule 7 (part)

PROPOSAL

The application seeks approval for the Use and Development of a Telecommunications Facility with the structure comprising of (in simple terms) a monopole and antennae with a finished height of 46m.

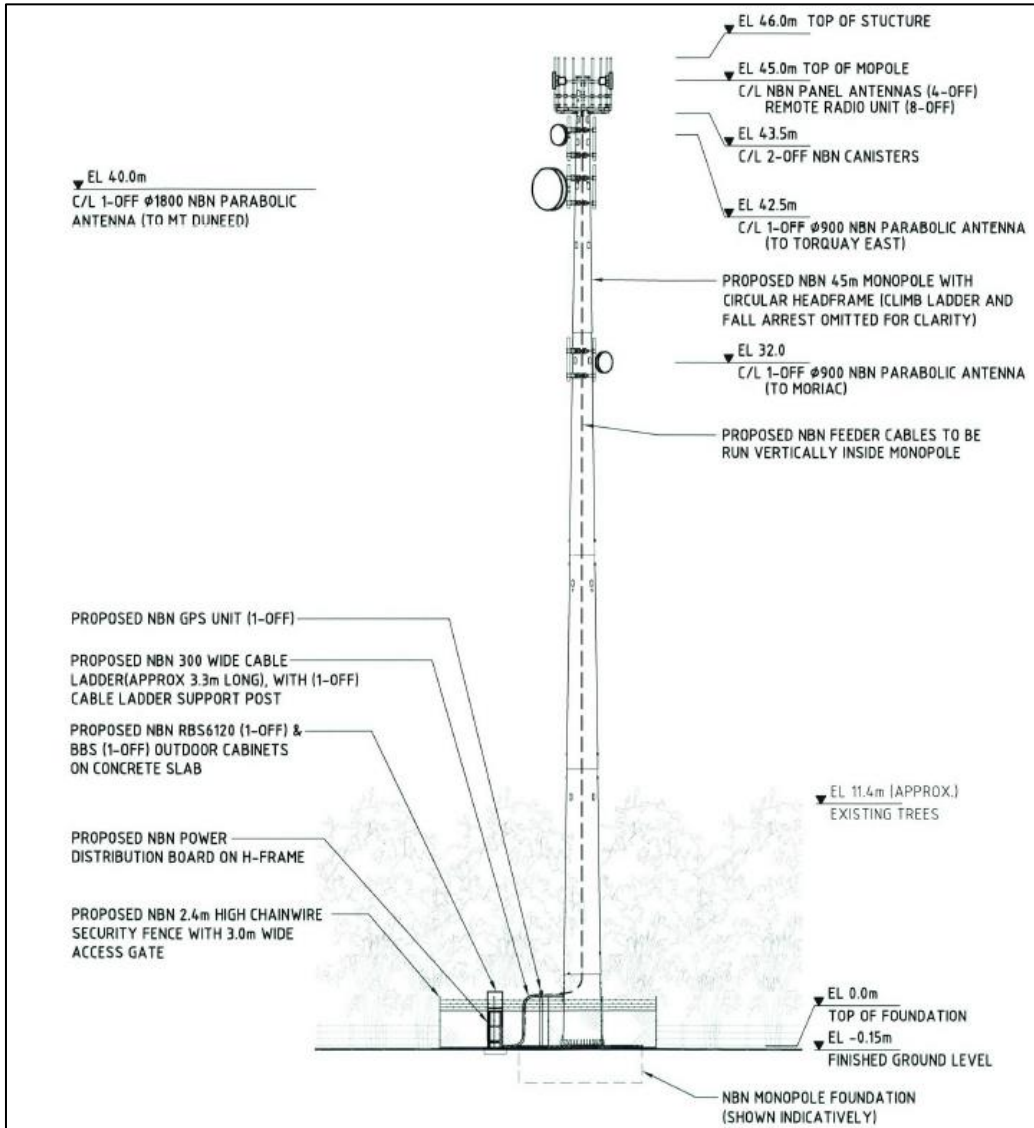
The facility is expected to provide the infrastructure required to facilitate the fixed wireless component of the National Broadband Network (NBN). The NBN is an upgrade to Australia's existing telecommunications network and seeks to provide Australians with access to fast, affordable and reliable internet and landline phone services.

The application submits that in order to support the Fixed Wireless component of this network, NBN requires a site to provide fixed wireless internet coverage to Bellbrae and to serve as a key communications anchor point for other NBN Fixed Wireless facilities in the wider Surf Coast Shire Council region.

The facility that is proposed to be installed comprises of:

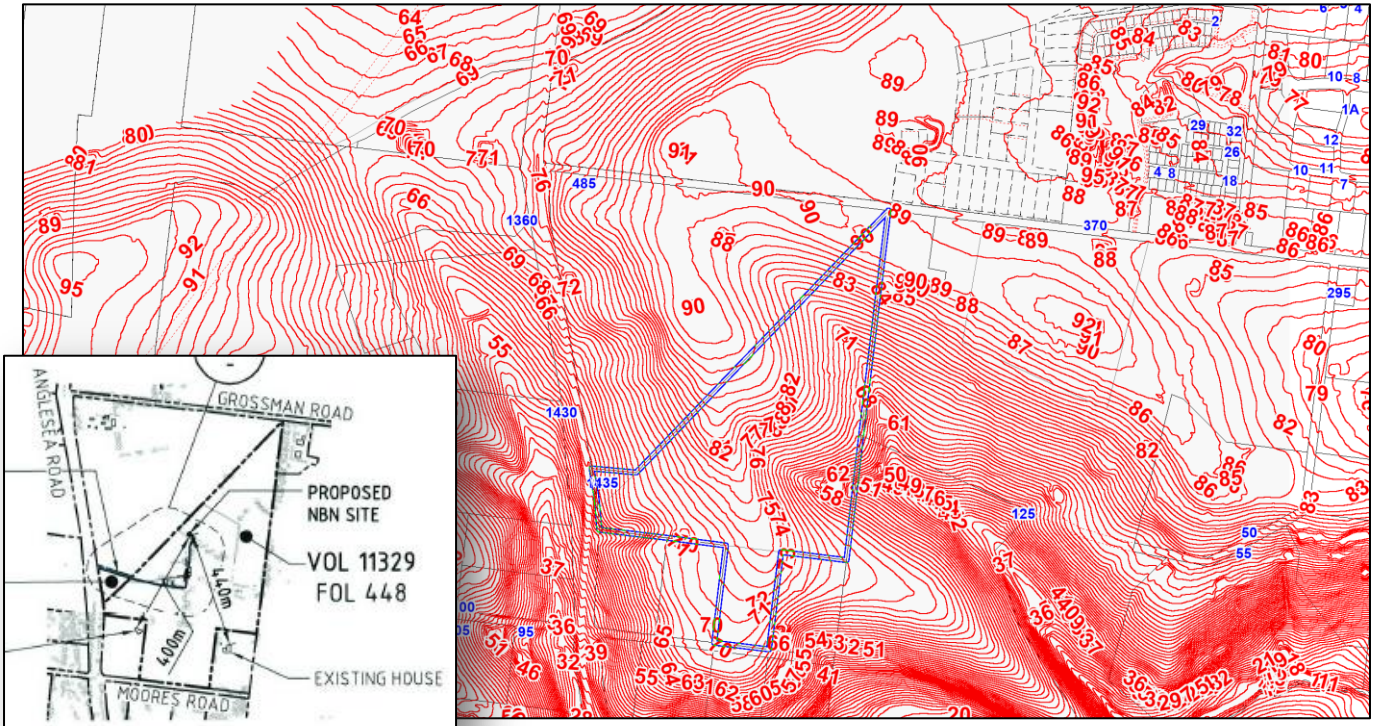
- a 45 metre high monopole;
- radio transmission equipment including 1 x parabolic dish antenna, 4 x panel antennas and 8 x remote radio units;
- 4 x new outdoor cabinets (one future); and
- ancillary equipment associated with operation of the facility, including cable trays, cabling, safe access methods, bird proofing, earthing, electrical works and air-conditioning equipment, inside a 10m x 10m fenced compound.

Figure 1 - Telecommunications Facility



The facility is proposed to be located at a high point in the central west area of the site, 39m from the north-western title boundary (see figure 2 below).

Figure 2 - Proposed Siting and Contour Maps



SITE AND SURROUNDING AREA

The 27-9ha application site is irregular in shape and is comprised of three lots held in common. These are Lots 1 and 2: TP865145 and Lot 2: TP16231 which are commonly addressed as 1435 Anglesea Road, Bellbrae.

Figure 3 - Aerial with NBN Site



The property is developed by a dwelling and various outbuildings which vehicular access via a driveway and crossing that provide direct connection to Anglesea Road. The access arrangement is unusual in that access is gained over 485 Grossmans Road to the north of the site's Anglesea Road frontage.

Vehicular access to the site for the purpose of maintenance of the tower will be provided via the same driveway (see further discussion below).

The site has abutments to the Anglesea Road and to Moores Road to the south. Given the irregular shape of the lot, there are a number of abutments to adjoining properties including:

West:

- 485 Grossmans Road – A Farming Zoned property of approximately 30ha that is developed by a dwelling and outbuildings in its north-west corner. The cluster of buildings would be approximately 500m from the proposed facility.

East:

- 399 Grossmans Road – A Farming Zoned property which is part of a larger holding of approximately 60.6ha. The property at 399 Grossmans Road is developed by a dwelling and ancillary infrastructure and outbuildings. The buildings are located approximately 450m north-east of the proposed facility. The property also includes land at 50 Ashmore Road which is developed by the Saltair Day Spa Resort.

South-east:

- 125 Ashmore Road – A Farming Zoned property that is currently vacant. Planning approval was granted in 2012 to use and develop the land for a dwelling. Plans have not yet been endorsed under the permit and construction has not yet commenced. However, based on the application plans the proposed facility will be approximately 550m from the proposed dwelling.

South:

- 60 Moores Road – One of a cluster of smaller lifestyle lots on Moores Road. The 3.3 ha (approx.) property is zoned Farming Zone and is developed by a dwelling and outbuilding/s at the northern end of the lot. The existing dwelling is located approximately 430m from the proposed facility.
- 80 Moores Road – A Farming Zoned property of approximately 3ha. Approval was granted in 2016 to allow the use and development of the land for a dwelling. Once constructed, the proposed dwelling would be approximately 380m from the proposed facility.
- 90 Moores Road – A Farming Zoned property of approximately 3.4 ha. The land is developed by a dwelling and associated outbuilding in the north-east corner of the site. The dwelling is located approximately 395m from the proposed facility.

Relevant History and Background

Past permits:

No record exists for any previous planning permit applications for the site.

Registered Restrictions

Under Section 61(4) of the *Planning & Environment Act 1987* the Responsible Authority must not issue a planning permit that would result in a breach of a registered restriction. The subject land is not affected by registered restrictions.

CULTURAL HERITAGE MANAGEMENT PLAN (CHMP)

The Aboriginal Heritage Regulations 2007 specify the circumstances in which a Cultural Heritage Management Plan is required for an activity or class of activity. Part 2 - Division 2 of the Aboriginal Heritage Regulations 2007 specifies exempt activities which do not require a Cultural Heritage Management Plan.

The site is not located within an area of Aboriginal cultural significance. In light of the above, a CHMP is not required.

REFERRALS

No external referrals were required to be undertaken.

PUBLIC NOTICE

Is the land owned, occupied or managed by Council?		No		
Advertising required?	Yes			
Advertise by:	<input type="checkbox"/> Applicant	<input checked="" type="checkbox"/> Council		
Advertising method:	Letters	Date letters sent	18-May-2017	
	Sign(s) on site	No. of signs required	One	
		Location of sign	Anglesea Road frontage near vehicle access point	
		Date signs displayed	31-May-2017 – 15-June-2017	
Date Notice completed satisfactorily (completed Stat. Dec. received or notice signed off by PO):			16-June-2017	

AMENDMENT TO APPLICATION AFTER NOTICE

The application was not amended prior to or after notice.

OBJECTIONS

Of the 64 objections received (ie. 64 objections from 43 households plus 1 x letter of support), 4 x referenced health issues as a concern, 53 x referenced coverage, 6 x referenced property values and 6 x referenced the need (or lack of).

Objecting parties have questioned the merits of the proposed site in the context of maximising NBN access for Surf Coast Shire property owners and occupiers in the Bellbrae area. The objections also reference a suggested alternative site at 261 Vickers Road, Bellbrae. The potential for related health issues and speculative impact on property values have also been raised.

Although referenced in the context of a VCAT hearing, Member Bennett (quoting Deputy President Gibson) in VCAT decision *Marshall v Ararat RCC* [2013]¹, listed a number of matters that are not planning grounds including:

- Potential health risks,
- Lack of Community consultation;
- Alternative locations;
- Opposition to details of the NBN program;
- Loss of property values.

In short, while the concerns raised are of importance to the objecting parties, the matters that may be considered under the planning scheme are confined. This is set out in the discussion below but in essence and as relevant to this application and the concerns raised here, the relevant matters are limited to visual impact and more broadly, compliance with State and Local planning policy.

The purpose of the particular provision does seek to respond to the objectives of Section 4 of the Planning and Environment Act 1987 and achieve a net community benefit. However, clause 52.19 does not trigger a permit for the 'use' and therefore, the effectiveness of one tower in the broader network is outside the ambit of considerations. The focus of the purpose (of clause 52.19) as referenced above is considered to be on the enhancement of the broader network to achieve the outcomes of the act rather than a critical assessment of the location of each tower.

In light of the confined matters that may be considered here, the matters listed above are not further discussed in this report.

The visual impact of the proposed tower is a relevant planning consideration and as it is discussed under the heading "discussion" below, it is not drawn out in this part of the report except in the context of adjoining properties (see below).

Pursuant to Sections 60(1)(f) and 60(1B) of the Planning and Environment Act 1987, the responsible authority must also consider (inter alia):

¹ *Marshall v Ararat RCC* [2013] VCAT 681 (6 May 2013)

- any significant social effects and economic effects which the responsible authority considers the use or development may have; and
- for the purposes of subsection (1)(f), the responsible authority must (where appropriate) have regard to the number of objectors in considering whether the use or development may have a significant social effect.

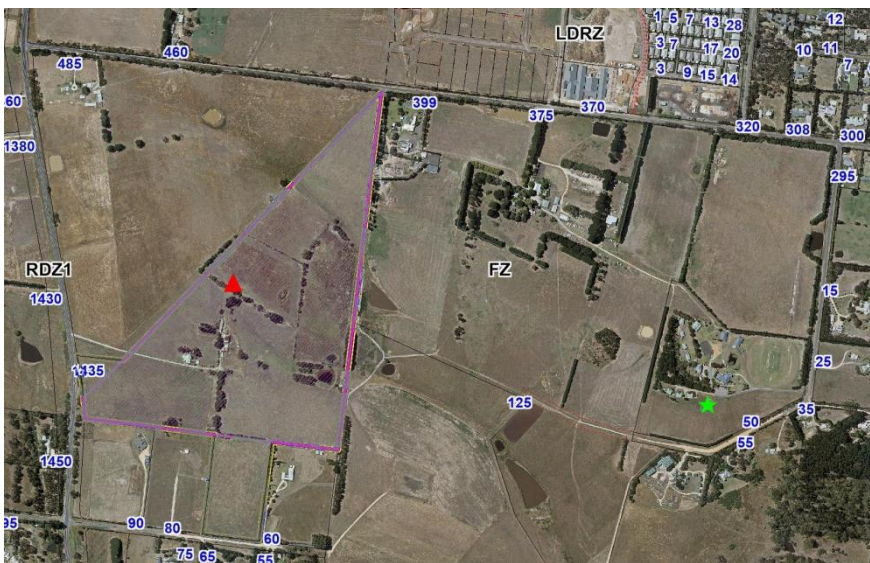
In light of this, decision makers are obliged to consider the possible significant social effects of the development. Having said this, while it is noted that 64 objections have been received, the emphasis of many of those objections is on matters that are not planning grounds. This is relevant in that it is considered that it is not simply the number of objections raised that determines the merits of the application but rather, it is the planning relevance of the issues raised that should be considered having regard to this section of the Act.

As the majority of the objecting parties have raised concern about matters that are not planning grounds, the application is considered to meet this test.

While the concerns of all objecting parties are relevant in the assessment of this application, as a number of the sixty-four submissions have been received from properties that are quite removed from the site the planning related concerns of all but the adjoining property owners have been responded to more generally. The concerns of adjoining property owners have been responded to specifically.

Adjoining property owners

East
50 Ashmore Road



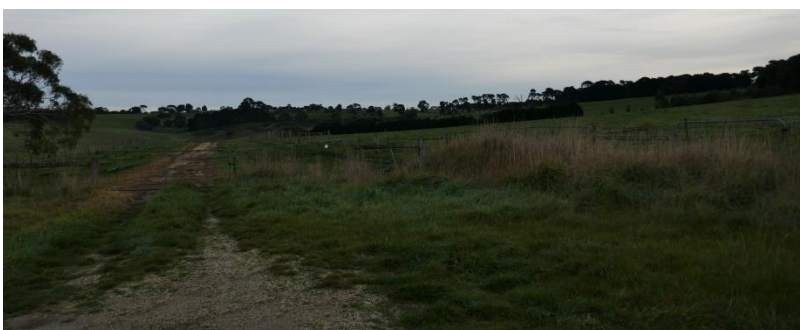
The emphasis on the concerns raised by the owners and occupiers of 50 Ashmore Road was on the visual impact of the NBN tower, including the consequential impacts on guests visiting the Day Spa.

The red triangle to the left depicts the approximate location of the NBN facility and the green star, the site at on 50 Ashmore Road.

The buildings at 50 Ashore Road have an approximate separation distance from the facility of 985 metres although given the sight lines and the more limited vegetation on the southern portion of the site, it is likely that the NBN tower will be

visible from the cottages.

The photograph below was taken from the western end of Ashmore road, south of 50 Ashmore Road and it is expected that the tower will be visible in this view.



As mentioned previously, in considering this and its effect, it is acknowledged that the surrounding landscape is not a pristine landscape, already being developed by dwellings and other vertical infrastructure. In a planning context, it is also relevant to note that the site is not been identified as sensitive in a landscape context through the application of a Significant Landscape Overlay.

Given the estimated 985m separation and the site lines, the tower will be visible. However, given the surrounding landscape context and relevant planning scheme considerations, it is considered that the addition of the tower in this location will not cause significant detriment due to its visibility.

East:
375 Grossmans Road



The emphasis on the concerns raised by the owners of 375 Grossmans Road is on the visual impact of the NBN tower.

The objecting party has submitted that the tower will create an eyesore from the proposed dwelling (permit approved 2012 although construction has not yet commenced).

Concern has also been raised that the tower will affect vistas through the Spring Creek corridor and affect future development potential.

The red triangle to the left depicts the approximate location of the NBN facility and the green star, the approximate proposed house site location at 375 Grossmans Road.

The proposed building site is estimated to be approximately 500m from the facility.

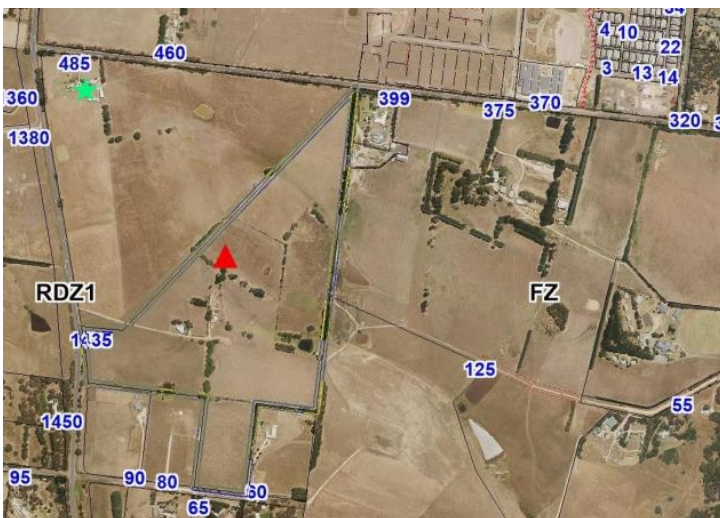
It is also noted that the proposed dwelling would sit lower in the landscape than the application site with the high point of the hill to the rear of the tower. It is expected that the NBN tower will be visible from the property. It is also acknowledged that the tower will be visible through the Spring Creek corridor as another vertical infrastructure element in the broader landscape.

As previously mentioned, it is noted that the surrounding landscape is not a pristine landscape, already being developed by dwellings and other vertical infrastructure including the transmission towers further to the west (ie. running south-west to north-east to the west of the application site).

In a planning context, it is also relevant to note that the site has not been identified as sensitive in a landscape context through the application of a Significant Landscape Overlay.

Given the 500m separation, the surrounding landscape context, it is considered that the addition of the tower in this location will not cause significant material detriment through its visual presence. It is further considered that given the zoning of the land and relevant planning considerations the existence of the tower will limit future development potential.

North-west
485 Grossmans Road



Concern has been raised about the visual impact of the NBN facility and the consequential reduction on property values. The objection also raises concern about the health impacts of the facility

As mentioned above, potential health risks and possible impacts on property values are not matters that may be considered under the planning scheme provisions. However, the visual impact of the tower is considered here.

The red triangle to the left depicts the approximate location of the NBN facility and the green star, the dwelling on 485 Grossmans Road.

The dwelling has an approximate separation distance from the facility of 500 metres.

It is also noted that the dwelling sits lower in the landscape than the application site with the high point of the hill between. In spite of this, it is expected that the NBN tower will be visible from the dwelling and from other areas on the property.

In considering this and its effect, it is acknowledged that the surrounding landscape is not a pristine landscape, already being developed by dwellings and other vertical infrastructure including the transmission towers to the west (ie. running south-west to north-east to the west of the application site). In a planning context, it is also relevant to note that the site has not been identified as sensitive in a landscape context through the application of a Significant Landscape Overlay.

Given the 500m separation, the surrounding landscape context and relevant planning scheme considerations, it is considered that the addition of the tower in this location will not result in material detriment due to a significant visual impact.

PLANNING SCHEME PROVISIONS

The use is defined as dwelling which is nested under accommodation.

Zone table

Farming Zone and Schedule (FZ) *last updated VC103*

Clause	Requirement	Proposal	Permit required
<p><i>Clause 35.07-1</i> Use of land</p>	<p>Permit is not required to use the land for a telecommunications tower provided that the facility can meet the development requirements of Clause 52.19</p>	<p>Development (buildings and works) for a telecommunications facility</p>	<p>Yes</p>
<p><i>Clause 35.07-4</i> Buildings and works</p>	<p><i>A permit is required to construct a building or construct or carry out:</i></p> <ul style="list-style-type: none"> ▪ <i>Buildings and works associated with a Section 2 Use, this does not apply to:</i> <ul style="list-style-type: none"> - <i>An alteration or extension to an existing dwelling provided the floor area of the alteration or extension does not exceed 100 square metres.</i> - <i>An out-building associated with an existing dwelling provided the floor area of the out-building does not exceed 100 square metres.</i> - <i>An alteration or extension to an existing building used for agriculture provided the floor area of the alteration or extension does not exceed 200 square metres. The building must not be used to keep, board, breed or train animals.</i> - <i>A rainwater tank.</i> ▪ <i>Earthworks which change the rate of flow or discharge point of water across a property boundary – refer to exemption in Schedule</i> ▪ <i>Earthworks which increase the discharge of saline groundwater - refer to exemption in Schedule</i> ▪ <i>A building which is within any of the following setbacks:</i> <ul style="list-style-type: none"> - <i>100 metres from a Category 1 Road;</i> - <i>40 metres from a Category 2 Road;</i> - <i>20 metres from any other road;</i> - <i>5 metres from a boundary;</i> - <i>100 metres from a dwelling not in the same ownership.</i> - <i>100 metres from a waterway, wetlands or designated flood plain.</i> 	<p>Development (buildings and works) for a telecommunications facility</p>	<p>Yes</p>

Particular Provisions

Clause 52.19 Telecommunications Facility

Clause 52.19-2 provides that a permit is required to construct a building or to construct or carry out works for a Telecommunications Facility, subject to a number of exemptions. The applicant has advised that the proposed development is not a low impact facility as described in the Telecommunications (low impact) Facilities Determination and therefore does not meet the exemptions as listed.

A permit is therefore required pursuant to Clause 52.19 for buildings and works for the telecommunications facility.

The purpose of Clause 52.19 is:

- *To ensure that telecommunications infrastructure and services are provided in an efficient and cost effective manner to meet community needs.*
- *To ensure the application of consistent provisions for telecommunications facilities.*
- *To 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.*
- *To encourage the provision of telecommunications facilities with minimal impact on the amenity of the area.*

The Decision Guidelines of this clause direct decision makers to consider as appropriate:

- *The principles for the 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.*

The **Code of Practice for Telecommunication Facilities in Victoria** (the Code) is an incorporated document in all Planning Schemes in Victoria pursuant to Clause 52.19.

The purpose of the Code is to:

- Set out the requirements under which land may be developed for a telecommunications facility without the need for a planning permit.
- Set out principles for the design, siting, construction and operation of a telecommunications facility which a responsible authority must consider when deciding on an application for a planning permit.

The Code aims 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 telecommunication 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 provisions of telecommunications facilities with minimal impact on the amenity of the area.

Part 4 of the Code sets out the principles for the design, siting, construction and operation of telecommunication facilities, which must be applied where relevant. These principles will be discussed later in this report and fall under the following headings:

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

- *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.*
- *A telecommunications facility mounted on a building should be integrated with the design and appearance of the building.*

- *Equipment associated with the telecommunications facility should be screened or housed to reduce its visibility.*
- *The relevant officer of the responsible authority should be consulted before any street tree is pruned, lopped, destroyed or removed.*
- *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.*

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

- Wherever practical, telecommunications lines should be located within an existing underground conduit or duct.
- Overhead lines and antennae should be attached to existing utility poles, towers or other radiocommunications equipment to minimise unnecessary clutter.

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

- A telecommunications facility must be designed and installed so that the maximum human exposure levels to radio frequency emissions comply with *Radiation Protection Standard – Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300 GHz*, Arpana, May 2002.

Principle 4: 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.

- 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.
- Construction should be carried out in a safe and effective manner in accordance with relevant requirements of the *Occupational Health and Safety Act 1985*.
- Obstruction or danger to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction should be minimised.
- Where practical, construction should be carried out during times that cause minimum disruption to adjoining properties and public access.
- Traffic control measures should be taken during construction in accordance with *Australian Standard AS1742.3 – 2002 Manual of uniform traffic control devices – Traffic control devices on roads*.
- Open trenching should be guarded in accordance with *Australian Standard Section 93.080 – Road Engineering AS 1165 – 1982 – Traffic hazard warning lamps*.
- 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.
- 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.

State Planning Policy Framework

The following State policies have been considered with respect to this application:

- **Clause 10.04 – Integrated Decision making**

Society has various needs and expectations such as land for settlement, protection of the environment, economic well-being, various social needs, proper management of resources and infrastructure. Planning aims to meet these by addressing aspects of economic, environmental and social well-being affected by land use and development.

Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

Consistent with the objectives of local government under the Local Government Act 1989, municipal planning authorities are required to identify the potential for regional impacts in their decision-making and co-ordinate strategic planning with their neighbours and other public bodies to achieve sustainable development and effective and efficient use of resources.

- **Clause 19.03-4 – Telecommunications**

The relevant objective of clause 19.03-4 is:

- *To facilitate the orderly development, extension and maintenance of telecommunication infrastructure.*

The relevant strategies of this clause are:

- *Ensure the communications technology needs of business, domestic, entertainment and community services are met.*
- *Do not prohibit the use of land for a telecommunications facility in any zone;*
- *In consideration proposal for telecommunications 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.*

Policy guidelines:

Planning must consider as relevant:

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

Local Planning Policy Framework

Municipal Strategic Statement

The MSS is a statement of the key strategic planning, land use and development objectives for the municipality and the strategies and actions for achieving those objectives. The key provisions of the MSS as it relates to this application include:

- Agriculture – Clause 21.05
- Rural Landscape – Clause 21.06

Officer Direct or Indirect Interest

No Council officers have any direct or indirect interest in the matter to which this report relates, in accordance with Section 80 (C) of the Local Government Act.

DISCUSSION OF KEY ISSUES

The application seeks approval for buildings and works to construct a telecommunications facility (the Facility) including a 45m monopole, associated antennas (46m with antennas) and equipment cabinets, all of which will be located within a 100 square metre lease area.

Permit Triggers

The application site is zoned Farming Zone where the use is a section 2 use. There are a number of conflicting VCAT decisions on this point but for ease of explanation here, I draw on VCAT decision Pfarr v Campaspe SC [2014] VCAT 872. The decision relates to the use and development of a telecommunications facility in the Farming Zone and of value to this assessment, Deputy President Helen Gibson clearly explains the construct of the scheme in arriving at the conclusion that a use and development trigger exists under the zone as well as the particular provision.

In summary, Deputy President Gibson concludes that:

Clause 62.01 (Uses not requiring a permit) includes that *“Any requirement in this scheme relating to the use of the land, other than a requirement in the Public conservation and Resource Zone, does not apply to...The use of the land for a Telecommunications facility if the associated buildings and works meet the requirements of Clause 52.19”*.

Clause 52.19 (Telecommunications Facility), under the heading "Permit requirement" states that "a permit is required to construct a building or construct or carry out works for a Telecommunications Facility. This does not apply to...". A number of elements are listed providing decision makers with the criteria to determine whether or not the facility is a low impact facility thereby exempting it from requiring a planning permit. As with the NBN tower that is the subject of this application, the tower in the Gibson decision was not a low impact facility and therefore, required a permit. Having said this, Deputy President Gibson does highlight the poor drafting of the State Provisions and the consequential ambiguity which has resulted in confusion about how they should be applied. The decision does provide a logical thought pathway and this has therefore, been drawn on here.

Ultimately, Deputy President Gibson concluded that:

- *A permit is required for buildings and works for the telecommunications facility pursuant to clause 52.19-2.*
- *Use of the land for a telecommunications facility is not exempt under clause 62.01.*
- *A permit is required for use of the land for a telecommunications facility under section 2 of clause 35.07-1. Because the use does not comply with clause 62.01, which would make it a section 1 use, it falls within the category "any other use not in section 1 or 3" and is therefore a section 2 use in the Farming Zone.*
- *A permit is required for buildings and works associated with a use in section 2 of clause 35.07-1 pursuant to clause 35.07-4. The requirement for a permit for buildings and works in the Farming Zone is not exempt from the need for a permit under clause 62.02-1 because the requirements of clause 52.19 are not met.*
- *The buildings and works for which a permit is required include the telecommunications tower, associated equipment and antennas, the fenced compound ...*

While the southern portion of the site is covered by a Significant Landscape Overlay, the tower location is unaffected (ie. by overlays) and the proposal therefore, does not require a permit under the overlay. It does, however, require a permit under Clause 52.19-2 (Telecommunications Facility) of the Surf Coast Planning Scheme.

While a permit is triggered under the zone, the assessment criteria is limited to the decision guidelines at clause 35.07-6 which generally focus on the impact of the proposal on the agricultural purpose of the land. In this instance, the tower and its compound would occupy a 10m x 10m lease area. The use would not be impacted by or impact on agricultural uses although very broadly speaking, the enhancement of the network might improve access to telecommunication services by those farming the land. The buildings and works element would have a minor impact on the agricultural use of the land through the loss of the lease area itself but this is not considered to be a significant impact in this context.

The application must also be assessed against the provisions of clause 52.19. The purpose of the planning scheme particular provision for Telecommunication Facilities seeks (inter alia) to encourage telecommunications networks consistent with the objectives of section 4 of the Planning and Environment Act 1987. In this context, providers should consider the need for a telecommunications network and associated infrastructure. In this instance, the need has not been contended by either the permit applicant or the objecting parties.

The particular provision triggers a permit for buildings and works associated with the construction of a telecommunication facility; the use elements are only triggered under the Farming Zone and are referenced above. In assessing the application, the decision making criteria is thus limited.

Put simply, the matters that may be considered in assessment an application for a telecommunication facility are confined to those set out in the decision guidelines under the Farming Zone (clause 35.07) and the particular provision at clause 52.19. While there have been a number of personal concerns raised by objecting parties in relation to this application, it is of consequence that of those raised, visual impact is the only matter that is a planning ground that may be directly considered under the decision guidelines of clause 35.07 and 52.19. The remaining concerns, while they are of obvious importance to the objecting parties, may not be considered other than in the context mentioned earlier.

As the site is not covered by any of the overlays listed at clause 52.19-6, the two matters under this clause that decision makers are directed to consider are:

- The principles for the design, siting, construction and operation of a Telecommunications facility set out in 'A Code of Practice for Telecommunications Facilities in Victoria'; and
- The effect of the proposal on adjacent land.

As mentioned above, the Code of Practice includes four principles which also include “an application of principle” (listed as dot points under the principles set out above) which provide guidance on their application. An assessment against the Code of Practice is set out below.

Assessment against Code of Practice for Telecommunications Facilities

Principle 1 requires that **a telecommunication facility should be sited to minimise visual impact:**

Of the five “Applications of Principle” under Principle 1, three are relevant to this application:

- *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.*
- *Equipment associated with the telecommunications facility should be screened or housed to reduce its visibility.*
- *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.*

As the Facility will be located at a high point, it will be visible in the landscape, including in distant views across the application site. Approximately 20 of the submitters raised the visual impact of the facility as viewed from the road (and in particular, the Great Ocean Road) as cause for concern.

This matter is relevant to this principle, including in the context of the status of the Great Ocean Road as a Heritage Place.

Without deviating too much from the most relevant points, it is worth noting that under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), an action that has, will have or is likely to have a significant impact on the heritage values of a National Heritage Place (inter alia) may be referred to the Australian government Minister for the Environment (the Minister) for assessment. In short, the obligation in determining whether or not a matter will be referred under the EPBC Act rests with the permit applicant; the application has not been referred in this instance.

As it relates to Principle 1, the application submits that the visual impact of the proposal is minimised as the telecommunications tower is well removed from surrounding roads and nearby dwellings. On this, it is generally agreed that in the context of its setting a reasonable degree of separation from key viewing points is achieved. The Facility would be in excess of 350m from the closest adjoining dwelling and the Anglesea Road, approximately 480m from Grossmans Road, 540m from Moores Road and 1.7km from the Great Ocean Road.

The applicant has also stated that the existing tree cover adjacent to the proposed site will limit the visibility of the lower portion of the Facility thereby reducing the visual impact of the proposal. Again, it is agreed that the trees will filter views to the lower sections of the Facility although it will not screen it. Given the 46m height of the tower and the need to ensure a clear line of sight, screening of the tower is not possible.

State planning policy makes it clear that an optimal telecommunications outcome is an important objective of the planning policy framework and any limitation on this must be on compelling landscape values.

The planning framework acknowledges telecommunications facilities must be taller than surrounding structures to effectively function and that this infrastructure forms part of a vital service to modern functioning communities.

While it is acknowledged that the Facility will be visible from beyond the site, it is important to recognise that this principle requires that the visual impact be minimised rather than avoided. It is considered that locating the Facility approximately 480m from the closest road and 350 meters from the closest dwelling will suitably limit its visual intrusiveness including from the Great Ocean Road where intermittent or fleeting views to the Facility 1.7km to the north-west are possible (please also see further discussion below).

Figure 4 - Photo taken from fence-line adjacent to Great Ocean Road and looks towards the application site. The arrow indicates the estimated location of NBN site



Figure 5 - Photograph taken from Ashmore Road looking north-west. Arrow indicates estimated location of NBN site



For the above reasons it is considered that the siting of the Facility will achieve a reasonable balance between the visual impacts and the overall community benefits provided from modern communications infrastructure.

Principle 2 requires that **telecommunication facilities should be co-located wherever practical:**

Forty-nine submissions commented on the suitability of the Facility's location as it relates to the provision of coverage. This was discussed earlier in the report and will not be repeated here except to emphasise that it is the acceptability of the proposal put forward in this application that must be considered; the planning scheme does not provide the discretion to speculate about outcomes on other sites.

In relation to Principle 2 specifically, the application states that there "are no practical co-location options available" with the two closest towers still too far from the preferred search area.

Principle 3 requires that **Health standards for exposure to radio emissions will be met:**

The applicant has advised that the proposed facility will be designed and installed to satisfy the requirements contained with *Radioactive Protection Standard – Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300 GHz, ARPANSA, May 2002*. The application has included a standard EME (Electromagnetic Environment) report to demonstrate compliance with predicted EME equating to 0.11% of the maximum exposure limit.

Principle 4 requires that **Disturbance and risk relating to siting and construction should be minimised. Construction activity and site location should comply with State environmental protection policies and best practice environmental management guidelines:**

The applicant has stated that the site is already a modified environment, being a rural property that has clearly been used for agriculture over a period of time.

Short term access by heavy vehicles will be required during the construction phase and lighter vehicles will periodically access the site subsequent to this. Any disturbance during construction will, however, be limited to the accessway and the area immediately around the proposed Facility although having said this, the application notes that the lopping (not removal) of adjacent trees will be required. Longer term, no significant disturbance is likely to occur outside of the identified compound.

The application also submits that construction will be undertaken in accordance with the *Occupational Health and Safety Guidelines* and that any damage will be rectified to return the property (outside of the lease area) to the standard that existed prior to the facility being installed.

In summary, it is considered that disturbance and risk relating to the siting and construction will be minimised and the construction activity complies with the relevant State environmental protection policies and best practice environmental management guidelines.

Conclusion

On balance the application is considered to achieve a net community benefit in accordance with clause 10.04 of the scheme and is appropriate for the reasons set out in the discussion. It is recommended that a Notice of Decision to Grant a Permit be issued for the Use and Development of a Telecommunications Facility subject to conditions.