

OM113003-20

**USE AND DEVELOPMENT OF THE LAND FOR A
TELECOMMUNICATION FACILITY (30M MONOPOLE -
DIGITAL TV REPEATER SITE) - 30 ROBERTS ROAD,
MARENGO**

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DEPARTMENT:	Sustainable Planning & Development	FILE REF:	PP45/2011

Location: 30 Roberts Road, Marengo

Zoning: Public Use Zone 1

Overlay controls: Wildfire Management Overlay
Erosion Management Overlay Schedule 1
Vegetation Protection Overlay Schedule 1

Proposed Amendments: Nil

Abuts: Residential 1 Zone

Restrictive Covenants: No

Purpose:

This application is seeking approval for the use and development of the land for the purposes of constructing a telecommunications facility comprising a 30m monopole digital TV repeater.

The application is before Council as the proposed structure exceeds eight (8) metres in height.

It is recommended that a Notice of Decision to Grant a Planning Permit be issued.

Declaration of Interests

No officer declared an interest under the *Local Government Act 1989* in the preparation of this report.

Summary

- The application seeks approval for the use and development of a 30 metre high telecommunications tower and associated works.
- The telecommunication facility is to enable the rollout of the digital TV signal which is scheduled to replace the analogue signal (to be switched off 1 May 2011).
- Two (2) objections have been received which raise issues of visual impact, impact on health, co-location and compliance with the Significant Landscape Overlay (3).

- Whilst the tower would be visible above the ridge line, there are three existing telecommunication towers of a similar height that break the skyline. It is considered that the additional tower is unlikely to have an unreasonable visual impact as the existing vegetation screens the majority of the tower from Great Ocean Road and provides a backdrop from most other vistas.
- On balance, it is considered that the community benefit of providing digital TV coverage in this area is important and should be supported.
- It is recommended that a Notice of Decision to Grant a Planning Permit be issued.

Background

The subject site is used as the Barwon Water Storage Basin. As the land is zoned PUZ1, planning approvals are generally exempt if the proposal is in association with the Storage Basin.

The site contains three (3) other telecommunications towers. The Broadcast Australia (BA) tower is located in the same vicinity and appears to be of a similar height as the proposed 30m tower. The two (2) other towers are located within 50m of the Great Ocean Road boundary and have heights of 22m and 35m respectively.

Only one (1) of these existing telecommunications towers appears to have been subject to planning approval. The 35m high Telstra tower was approved under Planning Permit PPA347/99 issued on 7 March 2000.

Issues / Options

Council has the options of:

- a) Supporting the application by the granting of a Notice of Decision to Grant a Planning Permit subject to conditions;
- b) Supporting the application with changes;
- c) Refusing to grant a permit.

The key issues relate to the visual impact of the telecommunication tower and the need for such a facility in Apollo Bay /Marengo.

It is recommended that Option (a) is supported.

Proposal

Planning approval is sought for use and development of the land for a telecommunications facility comprising a 30m high monopole digital TV repeater.

This facility will be housed within a fenced security compound measuring 4m x 4m. The facility abuts the site's southern property boundary and is setback 10m to the east of the existing Broadcast Australia (BA) compound.

The monopole and fence will be constructed of galvanised steel of an unspecified colour. The telecommunications cable will be located underground.

Vehicular access to the site will be directly off Roberts Road via an existing driveway.

Site & Surrounds

The subject site is located on the east side of Roberts Road, Marengo. The site is irregular in shape with an area of 7.6 hectares and abuts the Great Ocean Road to the south and Ferrier Drive to the north. The site contains;

- Barwon Water storage basin and associated shedding.
- Three (3) telecommunication towers (BA, Telstra and Optus) with heights varying from 22m to 35m.

Adjoining properties comprise a mix of crown land, farm land and residential land. The area is characterised by large allotments set amongst an undulating landform with vast tracts of remnant vegetation and large cleared areas.

The dwelling on 46 Ferrier Drive Marengo is situated opposite the site approximately 100 metres to the north-west of the tower site.

Public Notice

Public notice of the application was given in accordance with Section 52 of the Planning and Environment Act by sending letters to adjoining owners/occupiers, by placing two (2) signs on-site and by placing a copy of the Public Notice in the Apollo Bay News. The public notice was undertaken by Council at the request of the applicant.

At the conclusion of the notification period, two (2) objections were received. Issues raised in the objections have been summarised as follows:

- Visual impact.
- Obstruction of views.
- Co-location is possible on existing BA tower.
- Not consistent with objectives of Significant Landscape Overlay Schedule 3.
- No visual impact assessment provided.
- Property devaluation.
- Health impacts from emissions.

The issues raised are discussed later in this report.

Referrals

The proposal was not required to be referred to any internal departments.

Public notification of the application was sent to DSE pursuant to Section 52 of the Planning and Environment Act 1987. DSE advised that they have no objection to the proposal providing the following condition is placed on a permit if issued;

'All construction access and activity, and storage of vehicles, machinery and materials must be confined to the application site and may not occur on the adjoining Nature Conservation Reserve which adjoins the construction site immediately on the south.'

The condition is considered suitable for inclusion on any permit issued.

Planning Controls

a. State and Local Planning Policy Framework

The State and Local Planning Policy Framework seeks to ensure the objectives of planning in Victoria are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development. The following policies are relevant to the consideration of this application:

- Clause 11.05 – Regional Development
- Clause 12.02 – Coastal Areas
- Clause 12.04 – Significant Environments and Landscapes
- Clause 13.03-2 – Erosion and Landslip
- Clause 19.03-4 - Telecommunications
- Clause 21.03-3 – Apollo Bay and Marengo
- Clause 21.04-5 – Erosion
- Clause 21.04-8 – Landscape Character

Clause 19.03-4 states that *'consideration of proposals for telecommunication services, are to 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.'*

The proposal is considered to accord with the principles of the State and Local Planning Policy Framework. The applicant has advised that it was not possible to co-locate with the existing Telstra tower as it is a Telstra GSM site which does not allow broadcasters. It was also not possible to utilise the BA tower as the tower aperture was not able to meet the current requirements.

The applicant has provided sufficient justification for locating the facility at the subject site. It is considered there will be no negative impact to the environment, especially since no vegetation is to be removed. With regard to the potential visual impact, it is acknowledged that the tower is likely to be partly visible from nearby properties, however its visibility from the townships of Apollo Bay and Marengo will not be highly noticeable to the naked eye.

b. Zone provisions

The purpose of the Public Use Zone 1 is:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To recognise public land use for public utility and community services and facilities.
- To provide for associated uses that are consistent with the intent of the public land reservation or purpose.

Pursuant to the provisions of this zone, a Telecommunications Facility is a Section 1 Use (permit not required) on the condition that *'Buildings and works must meet the requirements of Clause 52.19.'*

The proposal does not meet the requirements of Clause 52.19, therefore, planning approval is required to use the land for a telecommunications facility and associated buildings and works as the proposed 30m monopole is not a low-impact facility as described in the Telecommunications (Low-impact) Facilities Determination 1997.

c. Overlay provisions

Wildfire Management Overlay

Planning approval is not required for buildings and works associated with a Telecommunications Facility under the provisions of this overlay.

Vegetation Protection Overlay 1

Planning approval is not required for buildings and works associated with a Telecommunications Facility under the provisions of this overlay.

The proposal does not require the removal of any native vegetation.

Erosion Management Overlay 1

Planning approval is required to construct a building or construct or carry out building and works pursuant to Clause 44.01 of the Colac Otway Planning Scheme.

The applicant has provided a Geotechnical Assessment (CivilTest, Soil Testing & Geotechnical Consultants, Rep No. 1110024.1, 2 March 2011) in accordance with the requirements of this Overlay provision.

The assessment provides the following landslip risk assessment:

'The preliminary slope assessment revealed two yes responses for caution required. Further to this site assessment (10-1-2011) we confirm that from the Preliminary Assessment Checklist in accordance with the Land Stability Assessment Guidelines and Procedures 2001, this site is of low risk of landslide.'

The assessment identifies the site as being of low risk of landslip and therefore the development is considered to respond positively to the objectives and decision guidelines of the EMO1.

d. Particular Provisions – Clause 52.19 Telecommunications Facility

A permit is required to construct a building or construct or carry out works for a Telecommunications Facility.

Clause 52.19 states that before deciding on an application, the Responsible Authority must 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.*
- *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.*

Consideration of the Proposal

Clause 52.19 (Telecommunications Facility) requires the Responsible Authority to consider '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 proposed Telecommunication Facility responds as follows to the four (4) principles.

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

The proposed telecommunications tower is sited towards the top of a hill on the western outskirts of the Marengo township. The tower will be visible from properties within the immediate vicinity of the site, however, it will be screened by substantial remnant vegetation. The vegetated back drop will also ensure the tower will not be highly noticeable to the naked eye when viewed from Marengo and Apollo Bay.

It is noted that the nearby BA tower has a similar height (approximately 27m) as the proposed tower (30m). The two (2) towers that are located near and are visible from the Great Ocean Road have heights of 22m and 35m respectively.

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

The applicant advised that they have explored all co-location options, however, in this instance co-location was not possible. The applicant advised that the existing Telstra tower is a Telstra GSM site which does not allow broadcasters whilst the BA tower does not have the correct aperture available to meet the current requirements.

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

In accordance with this principle 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 300GHz, ARPANSA, May 2002.

The applicant has provided a Radio Frequency Electromagnetic Energy (RF EME) Report which provides the following summary.

'The maximum cumulative EME level at 1.5m above ground level is estimated to be 0.0258% of the Australian Radiation Protection and Nuclear Safety Agency (APRANSA) public exposure limits. Note: the public exposure limit is 100%.'

It is noted that the nearest dwelling to the proposed tower location is at 46 Ferrier Drive, Marengo. The dwelling on this site is located approximately 100m to the north-west of the tower site.

A condition can be placed on a permit, if issued, requiring the facility to keep EME's to levels in accordance with the Standard.

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.

Disturbance to the site is expected to be minimal and construction will be undertaken in accordance with the relevant OH&S guidelines. The proposal requires minimal site works in the form of cut and fill, and does not require the removal of any vegetation.

It is considered that the proposed facility has satisfactorily addressed the principles for design, siting, construction and operation of the Telecommunications facility as set out in the Code of Practice.

General Discussion

Both objectors have raised concerns in relation to the impact of the tower on existing views. Both properties are located to the south west of the site. The principles of view sharing have been established by VCAT which have been most recently stated in *Healy v Surf Coast SC* [2005] VCAT 990:

- a) *“there is no legal right to a view;*
- b) *views form part of the existing amenity of a property and their loss is a relevant consideration to take into account;*
- c) *the availability of views must be considered in the light of what constitutes a reasonable sharing of those views;*
- d) *in addressing the concept of “reasonableness”, it is relevant to consider:*
 - i. *the importance of the view to be lost within the overall panorama available;*
and
 - ii. *whether those objecting have taken all appropriate steps to optimise development of their own properties.*
- e) *added emphasis will be placed on principles (b) and (c) above if the issue of views is specifically addressed in the planning scheme.”*

The planning controls affecting the subject land do not specifically address view sharing. Whilst the objectors’ land is covered by the Significant Landscape Overlay Schedule 3 (Apollo Bay Coastal Valley and Hills Precinct), the land subject to this planning application is not.

The proposed telecommunications tower will be partially visible from both the objectors’ properties so Council must decide whether the visual impact is reasonable. The view of the tower will be significantly screened by the existing remnant vegetation which is located between the proposed tower and the objectors’ properties. As such only the top section of the tower will be viewed from the dwellings on objectors’ properties. Furthermore the nearest objector’s dwelling (15 Roberts Road) is setback approximately 125m from the proposed tower site. The other objector’s dwelling (380 Great Ocean Road) is setback some 400m from the tower site.

Overall the tower will not result in significant visual impact and the overall panorama will be maintained. It is noted that there are already existing towers on the site that are of a similar height to the proposed tower that already break the skyline. Given that the planning controls affecting the subject land do not specifically address the issues of views, the proposed visual impact is considered to be appropriate in this instance.

Objectors Concerns

Some of the objectors’ concerns have been addressed above, however, the following is a more detailed assessment:

Not consistent with objectives of Significant Landscape Overlay Schedule 3.

The subject land is not affected by the Significant landscape Overlay Schedule 3. Roberts Road represents the border of the SLO3 coverage, with properties to the west covered whilst properties to the east are not affected.

Property devaluation

It is a long standing planning principle that the perceived loss of property value by objectors is not a matter which can be sustained when assessing an application for planning permit.

No visual impact assessment provided.

Upon receipt of the application and after a site inspection was undertaken it was deemed that a visual impact assessment was not required in this instance. The information provided along with a subsequent site inspection has allowed Council Officers to undertake a thorough assessment of the proposal's likely visual impacts on the site and surrounding properties.

Community Benefits

The proposal will allow for the residents of Apollo Bay, Marengo and surrounding areas to receive digital TV services given the pending switch off of the analogue service on the 1 May 2011. The applicant has explored all options with respect to co-location and the siting of the proposed facility. Whilst the telecommunications facility will be visible to nearby properties including the objectors, it is considered that existing vegetation will substantially screen its appearance and the overall view from these properties will not be obstructed by the proposal.

Overall the proposal reflects a reasonable balance between the provision of services (digital TV) and the need to protect the environment and visual amenity and it is recommended the application be supported.

Corporate Plan / Other Strategies / Policy

Planning policies relevant to this application have been discussed earlier in the report.

Financial & Other Resource Implications

There are no financial implications arising from this report.

Risk Management & Compliance Issues

There are no risk management or compliance issues arising from this report.

Environmental Consideration / Climate Change

There are no environmental or climate change implications arising from this proposal.

Communication Strategy / Consultation Period

Public notice of the application was required in accordance with Section 52 of the *Planning and Environment Act* as discussed earlier in the report.

Conclusion

Planning approval is required for the use and development of the land for a telecommunications facility.

Support for the proposal will allow for the rollout of digital TV within the region as the current analogue signal is due to be switched off on 1 May 2011. Overall the proposal reflects a reasonable balance between the provision of services and the need to protect the environment and visual amenity of the area and it is recommended the application be supported.

Attachments

Nil

Recommendation(s)

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That Council resolves to issue a Notice of Decision to Grant a Planning Permit for the use and development of a Telecommunications Facility (30m monopole digital TV repeater) and associated works at (C/A7, Sec3, 2936, Parish of Krambruk) 30 Roberts Road, Marengo subject to the following conditions:

- 1. The layout of the site and the size of the proposed buildings and works as shown on the endorsed plans must not be altered or modified without the written consent of the Responsible Authority.***
- 2. No additional antennas, aerials, satellite dishes or the like are permitted to be installed on the tower without further planning approval from the Responsible Authority.***
- 3. The nature and colour of building materials employed in the construction of the Telecommunications Facility must be non-reflective light to medium grey tones to the satisfaction of the Responsible Authority.***
- 4. If the telecommunications facility ceases to be operational, the installation must be decommissioned and removed to the satisfaction of the Responsible Authority.***
- 5. The use must be managed so that the amenity of the area is not detrimentally affected.***
- 6. The 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, ARPANSA, May 2002 to the satisfaction of the Responsible Authority.***

DSE Condition

- 7. All construction access and activity, and storage of vehicles, machinery and materials must be confined to the application site and may not occur on the adjoining Nature Conservation Reserve which adjoins the construction site immediately to the south.***

Expiry

- 8. This permit will expire if one of the following circumstances applies:***
 - The development is not started within two years of the date of this permit.***
 - The development is not completed within four 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 months afterwards.

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