



**MORNINGTON
PENINSULA**
Shire

MINUTES

PLANNING SERVICES COMMITTEE MEETING

MONDAY, 5 AUGUST 2019

7.00PM

**MUNICIPAL OFFICES
BESGROVE STREET, ROSEBUD**

MORNINGTON PENINSULA SHIRE COUNCIL

WARDS AND COUNCILLORS

Briars	Cr Rosie Clark Cr Bev Colomb Cr Sam Hearn
Cerberus	Cr Kate Roper
Nepean	Cr Hugh Fraser Cr Bryan Payne
Red Hill	Cr David Gill
Seawinds	Cr Simon Brooks Cr Antonella Celi Cr Frank Martin
Watson	Cr Julie Morris

EXECUTIVE TEAM

Mr John Baker Ms Jenny Van Riel Mr Mark Brady Ms Marnie Williams Mr Niall McDonagh Mr David Bergin	Chief Executive Officer Director – Communities Director – Corporate Services Director – Performance and Development Director – Place Director – Planning and Building
---	--

AUDIO RECORDING

Please note that an audio recording of this Council Meeting will be made and be available on the Shire's website within seven days of the meeting.

TABLE OF CONTENTS

ITEM	SUBJECT	PAGE NO
1	PROCEDURAL MATTERS.....	4
1.1	Apologies	4
1.2	Disclosure of Conflicts of Interest Pursuant to section 79 of the <i>Local Government Act 1989</i>	4
1.3	Confirmation of Minutes	4
2	STRATEGIC PLANNING REPORTS.....	5
3	PLANNING SCHEME AMENDMENT REPORTS.....	5
4	STATUTORY PLANNING REPORTS	6
4.1	Planning Application P18/2266 - Proposed Telecommunications Facility - 263 Red Hill Road, Red Hill South	6
4.2	Response to Notice of Motion 201 - Telecommunications Facilities	18
5	NOTICES OF MOTION	22
6	URGENT BUSINESS	22
7	CONFIDENTIAL ITEMS.....	23
8	MEETING CLOSE.....	24

1 PROCEDURAL MATTERS

Meeting opened at 7.06pm

Appointed Chairperson – Cr Kate Roper

Present

Cr Kate Roper (Chairperson)
Cr. Simon Brooks
Cr Antonella Celi
Cr Bev Colomb
Deputy Mayor, Cr Rosie Clark
Cr Hugh Fraser
Mayor, Cr David Gill
Cr Frank Martin
Cr Bryan Payne

1.1 Apologies

Cr Sam Hearn
Cr Julie Morris

1.2 Disclosure of Conflicts of Interest Pursuant to section 79 of the *Local Government Act 1989*

Cr Fraser disclosed an Indirect interest in relation to Item 4.1 'Planning Application P18/2266 – Proposed Telecommunications Facility – 263 Red Hill Road, Red Hill South' as he holds shares in Telstra either personally, in his superannuation fund or as an asset of a deceased estate in which he has an interest.

1.3 Confirmation of Minutes

RECOMMENDATION

That the Minutes of previous Planning Services Committee held on 15 July 2019, be confirmed.

COMMITTEE DECISION

Moved: Cr Martin
Seconded: Cr Payne

That the recommendation be adopted.

Carried

2 STRATEGIC PLANNING REPORTS

Nil.

3 PLANNING SCHEME AMENDMENT REPORTS

Nil.

4 STATUTORY PLANNING REPORTS

4.1 Planning Application P18/2266 - Proposed Telecommunications Facility - 263 Red Hill Road, Red Hill South

Prepared By	Emine Gurleyen, Senior Planner
Authorised By	Director - Planning and Building
Document ID	A8967865
Attachment(s)	<ol style="list-style-type: none"> 1. Letter of Support (confidential) 2. Objections (confidential) 3. Mobile Black Spot Priority Location List 4. Submitted Planning Report 5. Assessed Plans 6. Site Photographs
Application No.	P18/2266
Proposal	Use and develop the land for a telecommunications facility, remove vegetation and associated works generally in accordance with the submitted plans
Melway Reference	191J3
Zoning	Green Wedge Zone – Schedule 1, Environmental Significance Overlay – Schedules 10, 17 and 28, Vegetation Protection Overlay – Schedule 2, Significant Landscape Overlay – Schedule 1, Erosion Management Overlay – Schedule 1, Bushfire Management Overlay
Applicant	Visionstream
Date of Application	14 November 2018

PURPOSE

The purpose of this report is to seek a position from the Planning Services Committee (the Committee) regarding Planning Application – P18/2266 – 263 Red Hill Road, Red Hill South. The Application seeks planning permission for the use and development of the land for a telecommunications facility and the removal of vegetation.

The proposed use and development and vegetation removal is considered an inappropriate response to the subject site and surrounds, and the broader Green Wedge Zone. It is therefore recommended that the Committee resolves to issue a Refusal to Grant a Planning Permit for Planning Application P18/2266 – Proposed Telecommunications Facility – 263 Red Hill Road, Red Hill South.

Proposal	Use and develop the land for a telecommunications facility, remove vegetation and associated works generally in accordance with the submitted plans.
Zoning and Overlays	Green Wedge Zone - Schedule 1, Environmental Significance Overlay – Schedules 10, 17 and 28, Vegetation Protection Overlay – Schedule 2, Significant Landscape Overlay – Schedule 1, Erosion Management Overlay – Schedule 1, Bushfire Management Overlay.

4.1 (Cont.)

Permit Triggers	<p>Clause 35.04 Green Wedge Zone – Schedule 1: Section 2 Use, Buildings and Works.</p> <p>Clause 42.01 Environmental Significance Overlay – Schedule 10: Buildings and Works.</p> <p>Clause 42.03 Significant Landscape Overlay – Schedule 1: Buildings and Works.</p>
Advertising	<p>The proposed development is exempt from advertising under any provision of the Planning Scheme under Clause 52.19-3 including sections 51(1)(a), (b) and (d), the decision requirements of sections 64(1), (2) and (3) and the review section 82(1) of the <i>Planning and Environment Act 1987</i> (the Act) as the telecommunications facility is funded, or partly funded by the Commonwealth through the Mobile Black Spot Program and the State of Victoria.</p> <p>However, surrounding properties were advised by post that there is an application and the letter stated that there are no appeal rights under the Act. The purpose for providing notification was to ensure that, given the size of such a telecommunications facility, land owners are made aware of a facility being potentially located on the land and that the Planning Scheme would not enable them to appeal such a decision should it be made.</p> <p>Notification included letters to property owners and occupiers within an approximately one-kilometre radius from the subject site.</p>
Submissions	<p>Three objections and one letter of support were received.</p>
Consultation	<p>Telephone conversations, meetings and email correspondence has taken place throughout the course of Council's assessment.</p> <p>No Planning Applications Conference (PAC) has been held.</p>
Key Issues	<p>The need for mobile coverage, co-location opportunities, visual impact, health concerns and consistency with the Green Wedge Zone and the applicable overlays.</p>
Recommendation	<p>Refusal of the application.</p>

BACKGROUND

Previous Permits

P03/2753 – Permit issued for use and development of a winery (including vigneron licence), 85 seat restaurant/function room, ancillary accommodation, vegetation removal and associated works in accordance with the endorsed plans.

P09/2642 – Permit issued for use of the land to sell and consume liquor (vigneron licence) in association with the existing use of the land as a winery in accordance with the endorsed plans.

4.1 (Cont.)

Existing Conditions

The site is located on the eastern side of Red Hill Road, opposite the Kangerong Nature Conservation Reserve on the western side of the road. The land is a 24.62-hectare parcel, which joins to a 4-hectare parcel in contiguous ownership. The topography of the site undulates generally downhill from the street frontage (west) toward the east.

The smaller joined parcel of land contains the Port Phillip Estate winery building, crop raising (vineyard) and a dam. The larger parcel forms the subject site and contains the remainder of the vineyards, another dam, a dwelling and a bushland area to the north-east.

There are three points of access from Red Hill Road to the subject site. Two vehicle crossings access the winery and associated car parking areas. A separate vehicle crossing further south accesses the driveway which passes south of the vineyard to the dwelling. Entry to this driveway is secured by a locked gate.

A Section 173 Agreement – AE635299V is registered on the title of the land and relates to the use and development of the land for a winery in accordance with the conditions of Planning Permit P03/2753. None of the requirements are impacted by the proposed telecommunication facility.

Surrounding Land

The surrounding area is primarily Green Wedge Zone land, except for the Kangerong Nature Conservation Reserve which is a Public Conservation and Resource Zone.

The surrounding land parcels vary in size, from smaller dwelling parcels of 0.4 hectares to large, 60-hectare parcels of agricultural land. Most of the surrounding properties contain a dwelling and comprise predominantly cleared agricultural land (including grazing, horse stud and crop raising). Shared boundaries between properties are often defined by established vegetation, and the broader region contains areas of conserved bushland.

Red Hill Road is within a Road Zone – Category 2 and forms a major access route through Red Hill and Red Hill South. The road is sealed and contains a single lane in either direction, and open drainage on the western side. The roadsides are generally lined with established native canopy trees, except for the Port Phillip Estate road frontage (approximately 250 metres in length), offering views across the land and into the vineyard.

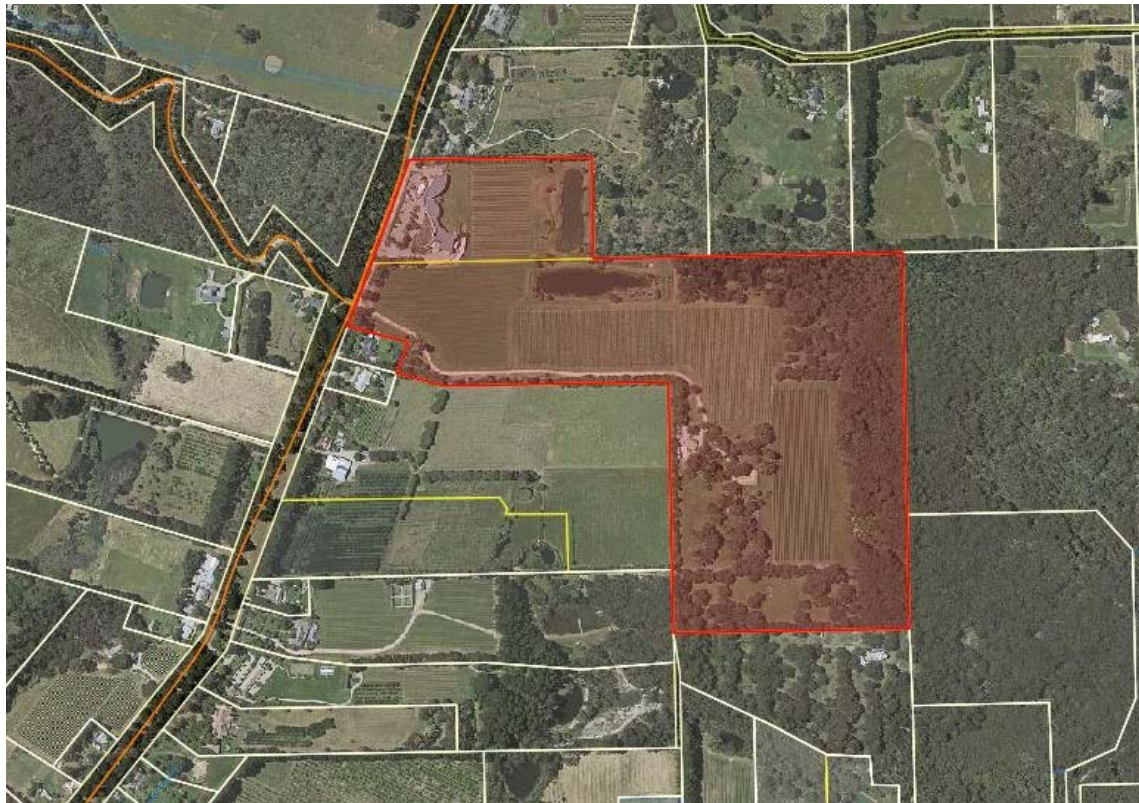
The properties immediately adjacent to the site include:

North	267 Red Hill Road: Dwelling on an 8.2-hectare parcel of land with grazing area to the east and a dam.
South	259 Red Hill Road: Dwelling on a 0.4-hectare parcel of land with a large backyard area to the east. Heritage significance has been identified on the property and further investigation is currently being undertaken. 251 Red Hill Road: 4.3-hectare parcel of land containing a dwelling and primarily used for an orchard. Heritage significance has been identified on the property and further investigation is currently being undertaken.
East	86 Stanleys Road: Dwelling on a 14.4-hectare parcel of land with expansive bushland continuing across the rear of the subject site into this land. 88 Stanleys Road: Vacant bushland parcel of 10 hectares in area.

4.1 (Cont.)

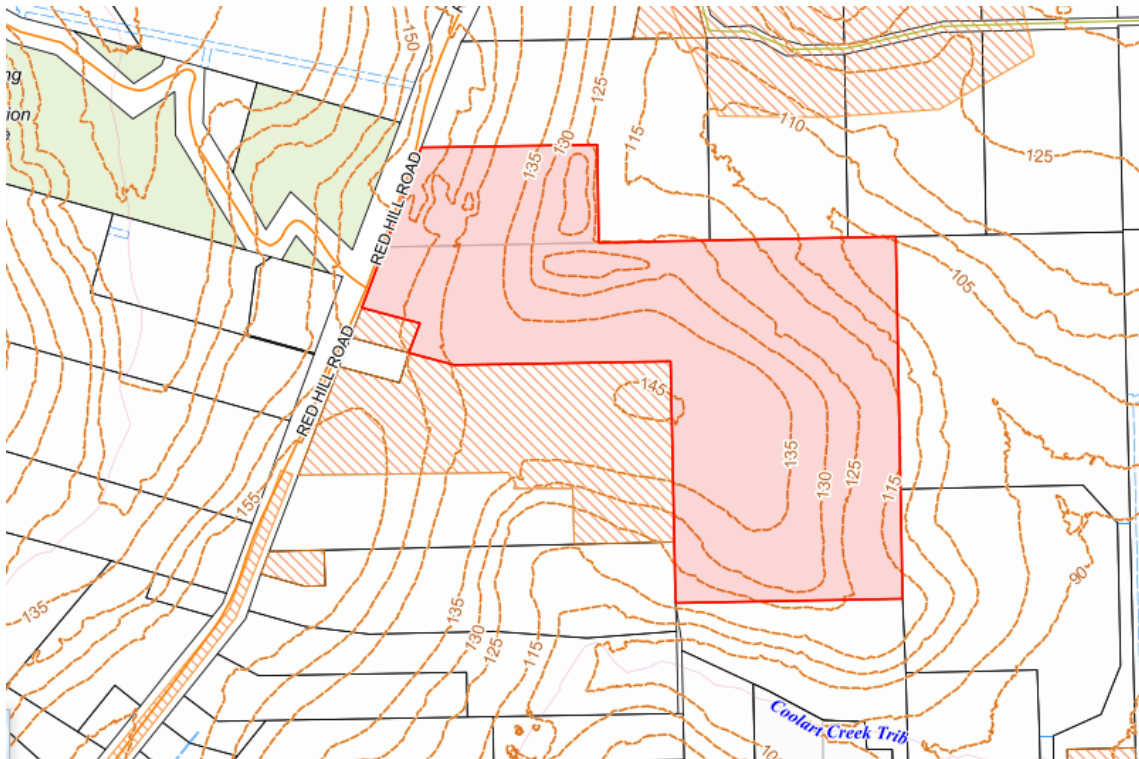
West:	Red Hill Road (as described above). Across Red Hill Road is the Kangerong Nature Conservation Reserve and McIlroys Road.
-------	---

Aerial Photograph of the Subject Site and Surrounding Land



4.1 (Cont.)

Contour Map of the Subject Site and Surrounding Land



PROPOSAL

The use and development of the land for a telecommunications facility, vegetation removal and associated works generally in accordance with the submitted plans.

The proposed telecommunications facility is to be located within an unfenced 10 metre by 10 metre lease area to the south-west of the land. The lease area is to be set back 5.7 metres from the shared boundary of the land to the south, being 259 Red Hill Road. A total of three trees are proposed to be relocated to provide entry into the lease area.

Proposed structures include a double access gate to access the lease area from the driveway, a 35-metre-high monopole with a 1.3-metre-high triangular headframe and panel antennas, and a 3 metre by 2.5 metre Telstra equipment shelter on a 4.2 metre by 3.7 metre crushed rock pad foundation.

NOTIFICATION AND CONSULTATION

Notification

The proposed development is exempt from advertising under any provision of the Planning Scheme under Clause 52.19-3 including sections 51(1)(a), (b) and (d), the decision requirements of sections 64(1), (2) and (3) and the review section 82(1) of the Act as the telecommunications facility is funded, or partly funded by the Commonwealth through the Mobile Black Spot Program and the State of Victoria.

However, surrounding properties were advised by post that there is an application and the letter stated that there are no appeal rights under the Act. The purpose for providing notification was to ensure that, given the size of such a telecommunications facility, land owners are made aware of a facility being potentially located on the land and that the Planning Scheme would not enable them to appeal such a decision should it be made.

4.1 (Cont.)

Notification included letters to property owners and occupiers within an approximately one-kilometre radius from the subject site.

Submissions

A total of three objections were received in relation to the proposal. The key concerns raised are as follows:

- The proposed height of the facility and the lack of street and side setbacks results in it being overly visible;
- The facility is unsightly and will detract from the natural environment and tourist appeal of the area when viewed from surrounding land and the road;
- Due to the lack of side boundary setback. the facility will unreasonably impact the amenity of adjoining land;
- It will result in devaluation of surrounding land; and
- Health related concerns.

In addition, one letter of support was received in relation to the proposal. The letter included the following comments:

- The area is a mobile black spot and the nearest mobile tower is more than 3 kilometres away;
- The lack of reception is a safety issue and does not allow communication across the property to ensure the wellbeing of people on the property; and
- The benefits outweigh the risks, costs or negatives in relation to the proposal.

Consultation

Telephone conversations, meetings and email correspondence has taken place throughout the course of Council's assessment.

No Planning Applications Conference (PAC) has been held.

PLANNING SCHEME PROVISIONS

Permit Triggers

Clause 35.04: Green Wedge Zone – Schedule 1

- A Permit is required for a Section 2 use;
- A Permit is required for buildings and works associated with a Section 2 use; and
- A Permit is required for buildings and works within the setback distances specified within the zone. The proposed facility is less than 40 metres from a Road Zone Category 2 and less than 5 metres from a boundary.

Clause 42.01: Environmental Significance Overlay – Schedule 10

- A permit is required for the removal/relocation of two golden wattles and one eucalypt; and

4.1 (Cont.)

- A permit is required for buildings and works.

Clause 42.03: Significant Landscape Overlay – Schedule 1

- A permit is required for the removal/relocation of two golden wattles and one eucalypt; and
- A permit is required for buildings and works.

Clause 52.19: Telecommunications Facility

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

State Planning Policy Framework
Clause 11.01-1R: To protect the green wedges of Metropolitan Melbourne from inappropriate development.
Clause 11.03-5S: To protect and enhance the valued attributes of identified distinctive areas and landscapes.
Clause 12.05-2S: To protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments.
Clause 19.03-4R: Support the provision of high-quality telecommunications infrastructure in Melbourne’s employment, urban renewal and growth areas through early planning for fibre-ready facilities and wireless infrastructure.
Local Planning Policy Framework
Clause 21.06: Protect areas of environmental, landscape, agricultural or recreational significance.
Clause 21.09: To maintain and enhance the natural values and ecological systems of the Peninsula.
To maintain the recreational role of the Peninsula by protecting the qualities of its landscapes, natural environment and cultural heritage.

Other

Clause 51.02: Metropolitan Green Wedge Lane: Core Planning Provisions

Clause 65.01: Approval of an Application or Plan

CONSIDERATION

State and Local Policy

The attractive rural landscapes of the Mornington Peninsula Shire (the Shire) are major features which distinguish the Mornington Peninsula from other areas. It is State Policy at Clause 11.01-1R that Green Wedges be protected from inappropriate development. Furthermore, State policy at Clause 11.03-5S requires that the Mornington Peninsula Localised Planning Statement must be considered when making a planning decision. An objective of the Planning Statement is to protect landscape and cultural values, with a related strategy being that all development will be designed to respect and, where possible, enhance the natural environment, the rural landscape and scenic values of the Green Wedge. Clause

4.1 (Cont.)

12.05-2S addresses Landscapes and under this Clause, it is policy to improve and maintain landscape qualities in Green Wedge land.

These State Policies are reinforced at the local level by policies and related strategies within the Municipal Strategic Statement, notably at Clauses 21.06 and 21.09, which broadly speaking, seek to protect and enhance the Shire's landscapes.

Clause 19.03-4 sets out State policy for telecommunications facilities. It has the objective of facilitating the orderly development, extension and maintenance of telecommunications facilities and infrastructure. A related strategy is to ensure that modern telecommunications facilities are easily and widely accessible to the community in general. It is a further strategy that, in considering proposals for telecommunications services, a balance be sought between the provision of important telecommunications services and the need to protect the environment from adverse impacts arising from telecommunications infrastructure.

The proposed facility would be the tallest structure in this location, with a height substantially greater than existing infrastructure and mature vegetation. It will also be located at the highest point of the subject land, which approaches a ridge in the landscape. There is a noticeable lack of vegetation along the road frontage of the subject land, and therefore the facility will be highly noticeable from the road, in particular when approaching from the north. The facility will also be highly noticeable within the broader landscape, being at an elevation of 181.1 metres Australian Height Datum (AHD) which is higher than any other structure or landform within the immediate vicinity.

Clause 35.04: Green Wedge Zone – Schedule 1

A Planning Permit is required to use the land for a telecommunications facility. The proposed use is unlikely to generate any unreasonable impacts to other properties and a link to rural land use can be drawn as the facility would provide for better communication throughout the rural area and improve safety for agricultural operations and occupiers alike.

A Planning Permit is required for buildings and works associated with a Section 2 Use, and for buildings and works within specified setback distances. It is noted that the proposed development requires substantial variations to these setbacks; a Permit is required for buildings and works setback less than 40 metres from a Category 2 Road and the proposed facility is setback 2.8 metres from this road. In addition, this section of Red Hill Road is covered by the Significant Landscape Overlay – Schedule 3, relating to Scenic Roads. A specific decision guideline of this overlay is 'whether the siting, height, scale, materials and form of proposed buildings and works, including infrastructure service lines, has been designed to have least visual effect on the landscape and scenic views' Based on the height and setback proposed, the development fails to take appropriate measures to reduce the visual effect on this road.

The proposed facility is also approximately 10 metres from a dwelling in separate ownership, being set back 5.7 metres from the shared boundary with 259 Red Hill Road. The dwelling's undercover outdoor entertaining areas, main living areas and secluded private open space face north, toward the site of the proposed telecommunication facility. Existing screening along the shared boundary comprises of modest hedges of approximately 1.5 metres in height. The entertaining area, living areas and private open space of 259 Red Hill Road currently enjoy views of the vineyard and the Port Phillip Estate winery building. The proposed telecommunications facility will be a very prominent structure from this dwelling and its limited setback is therefore inappropriate within this context.

4.1 (Cont.)

Clause 42.01: Environmental Significance Overlay – Schedule 10

The Environmental Significance Overlay – Schedule 10 relates to Upland Basalt Slopes and covers the entire site. The overlay sets out a number of environmental objectives to be achieved, including:

- To protect and conserve the environmental systems, bio-diversity, native vegetation, habitat areas, land and soil stability, drainage patterns, and stream quality of this area;
- To promote siting and design of buildings and works that is responsive to the varied rural landscape character and vistas of this area, and that maintains the scenic value of roads and recreation routes; and
- To protect the landscape values of the area.

As discussed above, the proposed telecommunications facility will have noticeable and detrimental impacts on the landscape when viewed from the road and from scenic vantage points within the broader landscape.

The proposed siting also requires the removal/relocation of three trees to provide access to the facility. The vegetation includes two golden wattles and one eucalypt, which the applicant advises were planted by the property owner less than 10 years ago. No supporting information has been provided to establish whether the relocation of this vegetation is possible without having a detrimental impact on the health and longevity of the vegetation, and no assessment of the vegetation's habitat value has been provided to ascertain whether its relocation will have a detrimental impact to the biodiversity of the area. Therefore, the proposed relocation of the vegetation is an inappropriate response to the Environmental Significance Overlay – Schedule 10.

Clause 42.03: Significant Landscape Overlay – Schedule 1

The Significant Landscape Overlay – Schedule 1 relates to Ridge and Escarpment Areas and covers the front portion of the land (for a setback of approximately 135 metres from Red Hill Road). The landscape character objectives under this overlay are:

- To protect and enhance the visual, natural and cultural heritage values of ridge and escarpment landscapes;
- To maintain the natural skyline of ridge and escarpment areas and avoid obtrusive building silhouettes;
- To avoid the construction of any buildings within 10 metres of a ridge area, unless no alternative site is available on the land;
- To protect ridge and escarpment landscapes from visual intrusion resulting from inappropriate buildings and works, and their siting, design or materials;
- To encourage siting, design and landscaping of buildings and works that is responsive to the landscape values of ridge and escarpment areas; and
- To maintain vegetation as an important element of ridge and escarpment landscapes.

The proposed telecommunications facility would stand at a height of 36.3 metres above natural ground level, far higher than any existing natural or built element within the landscape and existing vegetation will not provide adequate screening. The proposed elevation also exceeds the highest ridge points within the immediate area, and therefore the proposed facility will be highly visible from scenic vantage points in the broader landscape. The

4.1 (Cont.)

expansive site area provides many alternative siting opportunities that may reduce the visual impact to this significant ridge area.

The three trees to be relocated are unlikely to be an overly noticeable change to the landscape as views of the vegetation are filtered by other trees and large bushes on the street frontage of the land. If the proposal were to be supported, replanting conditions could mitigate the landscape impacts that removal of this vegetation would have.

Clause 52.19: Telecommunications Facility

The purposes of this clause are:

- 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 statewide 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 Act; and
- To encourage the provision of telecommunications facilities with minimal impact on the amenity of the area.

This clause also requires consideration of 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 and the Decision Guidelines of the Environmental Significance and Significant Landscape overlays.

The Proposal does not adequately apply the following principle for the design, siting, construction and operation of telecommunication facilities as set out within A Code of Practice for Telecommunication Facilities in Victoria:

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

In applying this principle, the Code provides the following relevant guidelines:

- Equipment associated with the telecommunications facility should be screened or housed to reduce its visibility; and
- A telecommunications facility should be located 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.

The existence of the Environmental Significance Overlay and Significant Landscape Overlay reflect the fact that this is a sensitive landscape context; photographs taken at a site inspection on 3 July 2019 further illustrate the scenic beauty of the area that these overlays aim to protect.

Existing mature vegetation is available on the roadside of Red Hill Road approaching the subject site (although not directly adjacent to the subject site, as outlined within the 'existing conditions' section of this report). At a distance, the vegetation will filter views of the base of the facility; however, due to its height of 36.3 meters, the proposed facility will protrude well above the height of the vegetation and will form a prominent and intrusive visual feature of the landscape.

4.1 (Cont.)

The proposed siting with minimal street and side boundary setbacks, and on the highest point of the land, does not achieve a minimised visual impact. Given the proximity of the proposed structure to the neighbouring dwelling, any form of screening would be unlikely to result in an effective minimisation of visual impact. There is expansive area on the subject site and it should be possible to locate the facility to reduce the visual impact of the structure when viewed from the road, the broader area, and the neighbouring property to the south.

It is acknowledged that other principles of the Code have been met or are able to be achieved through permit conditions if a permit is to issue.

Consideration of Submissions

As discussed above, three objections were received in relation to the Proposal. A response to objections not already addressed within this report follows:

- It will result in devaluation of surrounding land.

Planning legislation does not provide a mechanism for consideration to be given to the financial impacts of a proposal in relation to property value.

- Health related concerns.

Radiation and health related matters associated with telecommunications facilities are not regulated by Council. However, A Code of Practice for Telecommunications Facilities in Victoria, July 2004 is an Incorporated Document of the Mornington Peninsula Planning Scheme which provides maximum human exposure levels to radio frequency emissions. Previous Planning Permits have addressed the matter of health concerns by including the requirement as a permit condition.

In addition, one letter of support was received in relation to the proposal. The comments are of planning relevance and form a part of Councils assessment of the proposal against the Mornington Peninsula Planning Scheme. The provided assessment within this report addresses the key points of the letter of support.

Clause 65.01: Approval of an Application or Plan

This clause outlines numerous matters for consideration prior to deciding on an application or plan. For reasons outlined throughout this report, the proposed telecommunication facility is an inappropriate response when considered against the purpose of the zone and overlays affecting the land. Approval of the Application would be detrimental to the orderly planning of the area and would have an adverse impact on the amenity of the area.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

CONCLUSION

The proposed use and development of a telecommunication facility and vegetation removal is an inappropriate response to the subject site and surrounds, and the broader Green Wedge Zone.

The proposed use and development and vegetation removal does not provide a balance between the provision of telecommunications services and the need to protect the environment from adverse impacts arising from telecommunications infrastructure. The Mornington Peninsula is an area of State significance and the subject site and surrounds are

4.1 (Cont.)

affected by zoning and overlays that aim to protect the valued landscape and environmental features of the area. The proposal would have adverse amenity impacts on the adjoining property to the south, at 259 Red Hill Road. Given the expansive site area, it may be possible to site the facility in an alternative location that would minimise visual impacts of it from the road, the abutting land, and the broader area.

RECOMMENDATION

That the Planning Services Committee (the Committee) resolves to refuse Planning Application – P18/2266 – 263 Red Hill Road, Red Hill South for the use and development of a telecommunications facility, vegetation removal and associated works generally in accordance with the submitted plans on the following grounds:

1. The siting and design of the telecommunications facility would have a detrimental impact on the landscape values of the area.
2. The siting and design of the telecommunications facility would have adverse amenity impacts on the adjoining property to the south, at 259 Red Hill Road, Red Hill South.
3. The proposal is inconsistent with the State Planning Policy Framework, including Clauses 11.01-1R: Green Wedges – Metropolitan Melbourne, 11.03-5S: Distinctive Areas and Landscapes, 12.05-2S: Landscapes and 19.03-4R: Telecommunications – Metropolitan Melbourne.
4. The proposal is inconsistent with the Local Planning Policy Framework, including Clauses 21.06: Strategic Framework and the Peninsula’s Settlement Pattern and 21.09: Planning for Rural Areas.
5. The siting and design of the telecommunications facility is inconsistent with the purpose of Clause 35.04: Green Wedge Zone – Schedule 1 and the objectives of Clause 42.01: Environmental Significance Overlay – Schedule 10 and Clause 42.03: Significant Landscape Overlay – Schedule 1.
6. The proposal is inconsistent with Clause 52.19: Telecommunications Facilities.

Part B

That Council resolves that Attachment 1 and 2 to this report be retained as confidential items pursuant to section 77(2)(a) and (b) of the *Local Government Act 1989* as they contain personal submitter details.

Deputations

Mr Clinton Northey, VisionStream

COMMITTEE DECISION

Moved: Cr Gill
Seconded: Cr. Brooks

That the recommendation be adopted.

Carried Unanimously

4.2 Response to Notice of Motion 201 - Telecommunications Facilities

Prepared By	Lucas Gardiner, Team Leader – Planning Services
Authorised By	Director - Planning and Building
Document ID	A8991519
Attachment(s)	Nil
Application No.	T19/020
Proposal	Mobile Phone Base Station
Melway Reference	169F3
Zoning	RDZ1
Applicant	Metasite
Date of Application	29th May 2019

PURPOSE

The purpose of this report is to respond to points 3 and 4 of Notice of Motion 201 – Telecommunications Facilities (NOM01) heard at the Council Meeting on 23 July 2019 which required:

3. *That within 14 days of the date of this resolution, that a report be brought by the Chief Executive Officer to Council as to the proposed locations referred to in the resolution, including information as to whether any and what consultations with the community have taken place, the results of the consultations and if no such consultations have been undertaken, a plan to undertake consultations with the community.*
4. *Any further or other resolutions as Council thinks fit regarding the matter.*

BACKGROUND

Notice of Motion 188

Notice of Motion 188 (NOM188) heard at the Council Meeting on 3 December 2018, requires all stakeholders, community and Councillors to be informed, consulted and engaged with before any mobile phone radio communication infrastructure is constructed in the Shire, with the intention of giving all those parties an opportunity to respond to any proposal and to have those responses considered.

Since the introduction of this Notice of Motion, Officers now send notification letters to surrounding residents upon receipt of all Low Impact Facilities notifications from the various telecommunications carriers, to advise residents of the proposed low impact installation. For the sake of clarity, this letter makes it clear that the proposed installation does not form part of any planning permit process and that any queries or submissions should be forwarded to the relevant carrier proposing the installation, noting the Council has no statutory function or decision-making obligations for the installation of Low Impact Facilities (they are exempt from needing a planning permit).

NOTIFICATION AND CONSULTATION

On 29 May 2019, Council received written correspondence (registered internally as Reference No. T19/020) from Metasite regarding a proposed Mobile Phone Base Station to

4.2 (Cont.)

be attached to an existing electricity pole on the northern side of Nepean Highway in Capel Sound, directly opposite the intersection with Violet Street. The proposed facility is a Low Impact Facility in accordance with the Telecommunications (Low-impact Facilities) Determination 2018. The applicant's correspondence with Council included a draft consultation plan, which identified the carrier's proposed extent of notification and the plans of the proposed facility.

On 4 June 2019, Shire officers notified adjoining owners and occupiers within a defined radius of the location of the proposed telecommunication infrastructure (which equated to 708 letters being sent out); Council's notice included details on how to view the relevant information submitted to Council via a web-link.

As a result of this consultation, several residents have contacted both Council and Metasite via phone to query the proposal. A meeting was held with Seawinds Ward Councillors and a group of interested residents to discuss the proposed installation on 25 June 2019.

Item 6.2 (under Urgent Business) from the Council Meeting held on 25 June 2019 included an action that:

Council notes on behalf of the residents that they would prefer the mobile phone base station and related infrastructure to be relocated 250 metres south at the commercial intersection towards the corner of Truemans Road and Point Nepean Road, Capel Sound.

The above action was further clarified via Notice of Motion 201 (NOM 201) at the Council Meeting of 23 July 2019, which noted:

That Council has not adopted a position as to the location of the proposed mobile phone base station; at a pole on the Northern side of the intersection of Nepean Highway opposite Violet Street Capel Sound, as referred to in the resolution, or at any other location.

Shire officers have not yet acted on the items of urgent business as identified in Council's resolution of 25 June 2019, given impending NOM 201. Shire officers have now sent the community submission in accordance with the Notice of Motion 201.

No community consultation has been undertaken in regard to the alternative siting, since this is not a site that has been identified by the carrier; it would be inappropriate for Council to put this site forward as a potential site as part of community consultation. A discussion has been held with Metasite regarding the original location and the proposed site 250 metres further south, however Metasite have indicated that this may be investigated following feedback from their consultation processes.

It is noted that Metasite have not yet undertaken their own formal consultation in line with the draft Consultation Plan provided with their initial correspondence to Council. It is understood this will occur shortly.

Implementation Issues

Telecommunications Infrastructure which meets the Low Impact Facilities criteria does not need any form of approval from Council, however the *Telecommunications Act 1997* and the Code do contain notification obligations for telecommunications providers when seeking to install such facilities. Any disputes arising from the consultation may be referred to the Telecommunications Ombudsman.

Since implementing the notification of Low Impact Facilities Telecommunications Infrastructure in accordance with NOM 188, it is apparent that this has created a level of

4.2 (Cont.)

confusion in the public realm and the telecommunications industry, insofar as Council's duplication of the notification undertaken by the carrier as part of their formal process under the *Telecommunications Act 1997*. Furthermore, this has created a major resource implication within the Planning and Building Directorate and diverting staff from 'core business'.

Council Reference	Address	No. of letters sent	Staff hours to prepare documentation	Staff cost	Postage Cost
T19/015	105B Long point Road, Cape Schanck	8	1 hour	\$33.46	\$64
T19/017	2C First Avenue, Rosebud	123	5 hours	\$167.30	\$984
T19/018	325 Myers Road, Merricks North	10	1 hour	\$33.46	\$80
T19/019	1/3450 Frankston-Flinders Road, Merricks	201	5 hours	\$167.30	\$1,608
T19/020	Intersection of Nepean Highway, opposite Violet Street, Capel Sound	708	23 hours	\$769.58	\$5,664
T19/021	Cnr Point Nepean Road and Laura Street, Tootgarook	62	5 hours	\$167.30	\$496
T19/022	1440A Nepean Highway, Mount Eliza	209	5 hours	\$167.30	\$1,962
T19/023	2996 Frankston-Flinders Road, Balnarring	33	2.5 hours	\$83.65	\$264
T19/024	1084 Stumpy Gully Road, Moorooduc	16	1 hours	\$33.46	\$128
T19/025	1146A Nepean Highway, Mornington	114	3 hours	\$100.38	\$912
T19/026	5b Bray Street, Hastings	62	2 hours	\$66.92	\$496
T19/027	27a Diane Street, Mornington	118	2 hours	\$66.92	\$944
Total		1664	55.5 hours	\$1,857.03	\$13,602

The total cost of the above consultation process was \$15,459.03, which does not include the additional 44 phone calls and seven counter enquiries that also has a cost to staff resources.

OFFICER DIRECT OR INDIRECT INTEREST

No person involved in the preparation of this report has a direct or indirect interest requiring disclosure.

CONCLUSION

The proposed Low Impact Facility has been advertised by Shire officers in accordance with NOM 188. The Proponents (Metasite) will undertake their own consultation in accordance with the *Telecommunications Act 1997* and review any feedback as part of their formal consultation processes. This may lead to further investigations as to the suitability of alternative sites that are identified, however it is anticipated that factors such as radio communication distances within the network will play a key role in determining the ability to consider an alternative site.

4.2 (Cont.)

RECOMMENDATION

That the Committee:

1. Notes the consultation undertaken as part of the proposed Low Impact Facility installation on Nepean Highway (at its intersection with Violet Street, Capel Sound).
2. Decides to no longer implement the actions of NOM 188 due to the duplication of notification processes, confusion it has created amongst the community and resource implications to implement the notification in terms of advertising costs and Mornington Peninsula Shire officer time.

COMMITTEE DECISION

Moved: Cr Fraser

Seconded: Cr Payne

That the Committee:

1. **Notes the consultation undertaken as part of the proposed Low Impact Facility installation on Nepean Highway (at its intersection with Violet Street, Capel Sound).**
2. **That this report and the implementation of Notice of Motion 188 from the 28 August 2018 Council Meeting, be further considered at a workshop of Councillors.**

Carried Unanimously

5 NOTICES OF MOTION

Notices of Motion must be received three clear business days prior to a meeting.

Nil.

6 URGENT BUSINESS

Under Council's Meeting Procedure and Common Seal Local Law, no business may be admitted as urgent business unless it:

1. Relates to a matter which has arisen since distribution of the Agenda.
2. Cannot because of its urgency, be reasonably listed in the Agenda of the next Council Meeting.
3. Councillors by a majority vote, vote in favour of a matter being dealt with as urgent business.

Nil.

7 CONFIDENTIAL ITEMS

Nil.

8 MEETING CLOSE

As there was no further business, the meeting closed at 7.41pm

Confirmed this 19th day of August 2019

.....
Cr Kate Roper, Chairperson - Planning Services Committee